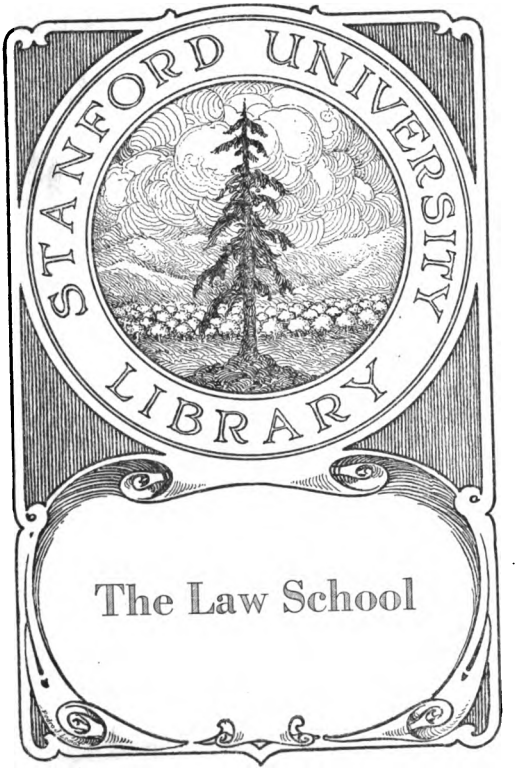
Report of proceedings

Washington State Bar Association



C. C. GOSE

President Washington State Bar Association

PROCEEDINGS

Washington State Bar Association

Held in the city of

ABERDEEN, WASHINGTON

July 29, 30 and 31, 1909

Twenty-first Annual Convention

OFFICIAL REPORTER
O. C. GASTON
EVERETT, WASHINGTON

OLYMPIA, WASHINGTON
1910
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Brown, L. Frank.....Seattle
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Fenton, Jas. E.....Seattle
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Flett, W. H.....Seattle
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Hartman, Jno. P.....Seattle
Hartson, M. T.....Spokane
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Higgins, Thos. B.....Spokane
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Hughes, P. D.....Seattle
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Romaine, J. W.....Bellingham
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Root, Milo A.....Seattle
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Rosslow, Joseph.....Spokane
Rozema, Martin.....Seattle
Rudkin, Frank H.....Olympia
Rummens, G. H.....Seattle
Rupp, Otto B.....Seattle
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Saunders, R. C.*.....Seattle
Saville, O. J.....Spokane
Scott, W. D.....Spokane
Seabury, I. H.....Sedro-Woolley
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Shank, Corwin S.....Seattle
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Sharpstein, Jno. L.....Walla Walla
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Sheller, T. H.....Seattle
Shepard, Chas. E.....Seattle
Shine, P. C.....Spokane
Shippen, Joseph.....Seattle
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Simpson, James M.....Spokane
Smith, Carl J.....Seattle
Smith, Chas. Wesley.....Seattle
Smith, Del Cary.....Spokane
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Smith, Sol.....South Bend
Smith, Winfield R.....Seattle
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Snook, Herbert E.....Seattle
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Spirk, Geo. L.*.....Olympia
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Stedman, Livingston B.....Seattle
Steele, E. N.....Olympia
Steele, Sam'l. H.....Seattle
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Steiner, R. S.....Waterville
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Stevenson, Loren C.*.....Tacoma
Stewart, James.....Pt. Angeles
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Sturdevant, R. F.....Olympia
Sturdevant, R. M.*.....Dayton
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Sumner, Sam R.....Wenatchee
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Terhune, R. S.....Seattle
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Troy, P. M.....Olympia
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Waller, J. L.....Seattle
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Whitlock, J. C.....Seattle
Whitson, Edward.....Spokane
Wickersham, Jas.....Fairbanks, Alaska
Wiley, Chas. S.....Seattle
Wilhelm, Honor L.....Seattle
Williams, J. A.....Spokane
Williams, W. Mervyn.....Seattle
Williamson, Geo. G.....Tacoma
Wilshire, W. W.....Seattle
Wilson, Harry E.....Seattle
Wilson, Jno. M.*.....Olympia
Wilson, Lester S.*.....Seattle
Wilson, Worrall.....Seattle
Winders, C. H.....Seattle
Winfree, W. H.....Spokane
Woods, Ralph.....Tacoma
Wooten, Dudley G.....Seattle
Worden, W. A.....Tacoma
Wray, Wm.....Seattle
Wright, Elias A.....Seattle
Wright, Geo. E.....Seattle
Yakey, John B.*.....Port Orchard
Zent, W. W.....Ritzville

PROCEEDINGS

The proceedings of the Washington State Bar Association, Twenty-first Annual Session, held at Aberdeen, Washington, July 29-31, 1909.

Thursday, July 29, 1909, 10:30 a m.

MR. PRESIDENT—Gentlemen, if you will come to order, we will proceed with the business of the day. The first thing will be the reading of the report of the Secretary.

REPORT OF SECRETARY.

Olympia, Washington, July 1, 1909.

To the Washington State Bar Association:

As Secretary I submit my report for the year ending July 1, 1909, as follows:

Membership at last report		527
Admitted since last report		13
Total		540
Died since last report	4	
Left state	4	
Withdrawn	5	
		13
Total membership		527
Dues collected since last report		$562.00

Expenses since last report:

August 1, printing programs, etc.	$ 14.00
August 1, postage	35.00
August 24, stenographer	10.00
August 24, expenses of meeting	21.00
Sept. 1, transcript of proceedings	28.45
Jan. 8, 1909, printing Hadley banquet	8.50
Jan. 8, Hadley banquet	46.00
Feb. 10, printing proceedings and president's address separately	175.00
March 1, wrapping and mailing proceedings and address	12.00
Postage on same	17.50

June 30, telegraphing and telephoning for year.....	22.30	
Postage	20.00	
Salary	60.00	
Total		$469.75
July 1, balance.....		$ 92.25

MR. PRESIDENT—The report of the Treasurer.

MR. SECRETARY—The Treasurer has made his report and asked that I should read it. It is as follows:

REPORT OF TREASURER.

Olympia, Washington, July 28, 1909.

To the Officers and Members of the Washington State Bar Association:

Gentlemen—I have the honor to present for your consideration, this my annual report as Treasurer of this Association for the fiscal year ending with the date hereof:

To balance as per last annual report.....	$ 480.26	
To received from Secretary.....	562.00	
Total		$1,042.26
By paid warrant No. 32.....		$469.75
To balance cash on hand.....		$572.51

Respectfully submitted,

N. S. PORTER, Treasurer.

MR. PRESIDENT—The report of the Executive Committee.

MR. SECRETARY—Mr. President, the Executive Committee has held no formal meetings during the year and has no formal report to make.

MR. PRESIDENT—The election of members is the next order of business.

MR. SECRETARY—Mr. President, I have here the following applications for membership. (See list membership—new members marked *):

Upon motion, those whose names were read were declared duly elected to membership.

MR. PRESIDENT—The report of the Committee on Constitution. Mr. Terhune is chairman of that committee.

MR. SECRETARY—Mr. President, Mr. Terhune has just handed me his report. (Secretary read the proposed constitution).

MR. SHANK—Mr. President, in order that this matter may receive proper consideration, I move you that the consideration of this report be made a special order of business immediately upon convening this afternoon.

Seconded and carried.

MR. PRESIDENT—Gentlemen, it seems to me rather unfortunate that it has become a custom of this Association that the President should deliver an annual address. We have a great deal of business of considerable importance to transact here, and, for that among other reasons, I would be glad to honor that custom by the breach of it, but I really see no way out of my duty in the matter. I will ask Vice President Corwin S. Shank to take the chair.

Upon Vice President Shank assuming the chair, President Bridges delivered the annual address. (See appendix).

VICE PRESIDENT SHANK—What is the pleasure of the Association with reference to this paper of the President? It is the custom to make some disposition of it, and it is likewise open for discussion.

MR. SOL SMITH—I move that this most excellent address of our President be printed in pamphlet form in sufficient quantity that every lawyer of the state of Washington may have a copy, and that he be requested to purchase that copy at a price so that those sold will meet the expense of printing. I think every member of the Association and every honest, honorable lawyer who is interested in the welfare of the people of this state and the integrity of the bar should consider himself a committee of one to weed out of our profession the shysters that we unfortunately have here in the state of Washington and to carry into force and effect the spirit of this address.

Motion seconded.

VICE PRESIDENT—You have heard the motion, that this paper be printed in such quantity that each member of the bar may have a copy and that they be sold. Is there anything to be said?

ATTORNEY GENERAL BELL—I think that portion of the motion providing for the sale of it should be eliminated and that it should simply be printed at the expense of the Association and distributed to the members of the bar in accordance with the motion. I make that as an amendment.

The amendment being seconded, the mover of the motion and his second accepted the amendment.

VICE PRESIDENT—The motion, as it now stands, is that this address be published in sufficient quantity so that each member of the bar of the state should have one.

MR. MCCAFFERTY—I understand the President's address is usually published in the regular proceedings and those proceedings are sent out to the members of this Association, and it seems to me it would be unnecessary to publish it specially. I want to do every honor that can be possibly done to the address and every honor that should be done and I agree perfectly with what Brother Smith has said, but it seems to me, as this will be published in the proceedings of the Association, that special printing will be unnecessary.

MR. SOL SMITH—While it is true that this address will be published with the proceedings of this Association, yet every member of the bar of this state is not a member of this Association and does not get a copy of these reports, but, if published separately—and I think it is worthy of separate publication—every lawyer of the state will feel an interest in getting it and, when he gets it, will read it and it will be of wonderful benefit to the legal profession. I do think that the motion, as amended, should carry, that it should be published and that each should have it. I do not know but it should have a wider circulation.

The motion as amended is put and carried.

VICE PRESIDENT—Is there anything further to come before this Association? Mr. President, will you assume the chair?

MR. PRESIDENT—Gentlemen, you will pardon me for saying at this time that it appears to me that there is considerable business to be performed by the Association, and it is hoped that we will have completed the business so that we can leave here on Saturday morning to go to the beach and that we terminate the business of the Association sometime during Friday. I speak of that that as much expedition may be had as possible. I think there are several matters of importance and I think it will be necessary to rush things through as well as we can conveniently. The next is the report of the Committee on Corporations. Mr. Bausman, of Seattle, is chairman.

MR. SECRETARY—Mr. Bausman told me he would be here, but I do not see him here now. He may be down today.

MR. PRESIDENT—We will pass that for the present. The report of the Committee on Jurisprudence and Law Reform.

MR. SECRETARY—That is in the same condition.

MR. PRESIDENT—Then, unless there are objections, the chair will make the same ruling concerning that. The report of the Committee on Judicial Administration and Remedial Procedure.

The report of the Committee is read by Mr. Miller, chairman, and here follows:

Aberdeen, Washington, July 29, 1909.

To the Washington State Bar Association:

Gentlemen—The members of this committee are unanimously of the opinion that this state has a superfluity of statute law and that the committee should, at this time, make no recommendations of changes or additions, in the matter of procedure, unless the same are of the most urgent necessity. In its deliberations in the discharge of duties, this committee has religiously discarded consideration of any matter that would smack of legislative tinkering, or simply give greater convenience to the bench and bar, and it would have enjoyed immense satisfaction if conditions had been such as to enable it to

report to the Association that the public necessity required no recommendation from this committee, at this time.

Numerous subjects within the jurisdiction of this committee, the conditions as to which were pointed out as not entirely satisfactory, were suggested by various members of this Association, as well as of the committee, itself, who had given more or less study and thought to the occasion. One after another, these suggestions were rejected by the committee until the entire list had dwindled down to a single suggestion. The more this one remaining subject was discussed and studied the greater appeared the necessity for such a change as would eradicate the evils which have grown out of the system of which it is a part until the conditions as to this matter have become, in the view of this committee, of an alarming character and nature.

It is safe to say that full six hundred matters, including appeals, the various writs and motions, claim the attention of the supreme court, annually, or more than two matters for each working day in the year. Under our present system, the facts are brought before the appellate court in such a way as to be simply equivalent to a certified copy of the stenographer's notes, taken upon the trial in the court below. This story of what took place is typewritten, oftentimes very badly, and only one copy is filed in the appellate court. An examination of this transcript will show that twenty-five per cent of the matter contained in it was not even material in the trial court, that fifty per cent of the matter besides could not become material in the appellate court and, probably, a further fifteen per cent could be stricken from the transcript as serving no useful purpose. But, under the present system, the appellate court must wade through this entire transcript to find the ten per cent or less, to acquire the information necessary to apply the law on the appeal. It is not pretended and never has been, that each judge, habitually, reads the record in each case. The profession not only knows that it does not do that, but it knows, equally well, that such a thing is an utter impossibility. The result is that in a large majority of instances the record is read by a single judge and the court is dependent upon that judge for its knowledge of the facts in the case. Whereas, each judge participating in the decision should have a complete and accurate knowledge of all the essential facts in the case. The result is that many decisions of our supreme court are unsatisfactory, not only to the profession, but to the members of the court, themselves. Naturally, this is followed by grave criticism of the supreme court and the more indignant of defeated suitors readily affect to be able to see, in these instances, that the court, or its individuals, were influenced by considerations

other than a desire to render exact justice. While the profession believes that the fault is entirely with the system, and not at all with the court itself. On appeal, the record for the supreme court should be so abbreviated as to include only such matters as are material to elucidate the errors complained of and the assignment of errors should be filed at the time of taking the appeal. All questions intended for review by the supreme court should be taken up by bill of exceptions and the bill of exceptions should contain only the several matters of law to which exception was taken. The assignment of errors should set out separately and particularly each error asserted and intended to be urged. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors should quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors should set out the part referred to *in haec verba* whether the instruction was given or refused. The assignment of errors, the bill of exceptions and the pleadings should constitute the transcript of the record and all records should be printed under the supervision of the clerk of the court from which the appeal is taken and a sufficient number of the printed records should be filed with the clerk of the supreme court, so that each judge might be furnished with the printed copy in each case. This would enable each judge to become thoroughly familiar with the facts in the case from which to form a conclusion of his own, but what is probably more important than all other considerations, the facts would be so accessible to all of the judges, as to permit of intelligent and effective discussion and consideration by them in the consultation room.

In lieu of sections 5050 to 5059, inclusive, of Ballinger's code, your committee recommends the following:

Section I. An exception is an objection taken to a decision of the court upon a matter of law.

Sec. II. The party objecting to the decision must accept at the time the decision is made; but time may be given to reduce the exception to writing, but not beyond the lapse of thirty days, unless by special leave of the court. It shall not be necessary to copy a written instrument or any documentary evidence into a bill of exceptions, but it shall be sufficient to refer to such evidence if its appropriate place be designated by the words "here insert"; provided, that if a motion for a new trial shall be filed in a cause in which such decision, so excepted to, shall be assigned as the reason for a new trial, such motion shall carry such decision forward to the time of ruling on such motion, and time may be given by the court within which to reduce such exception to writing.

Sec. III. No particular form of exception is required. The objection must be stated with so much of the evidence as is necessary to explain it and no more, and the whole as briefly as possible.

Sec. IV. Where the decision objected to is entered on the record and the grounds of objection appear in the entry, the exception may be taken by the party causing it to be noted at the end of the decision that he excepts.

Sec. V. When the record does not otherwise show the decision or grounds of objection thereto, the party objecting must, within such time as may be allowed, present to the judge a proper bill of exceptions which, if true, he shall promptly sign and order filed in the cause; if not true, the judge shall correct, sign and cause it to be filed without delay. When so signed, it shall be a part of the record, and delay of the judge in signing and filing the same shall not deprive the party objecting of the benefits thereof. The date of the presentation shall be stated in the bill of exceptions and the entry shall show the time when granted, if beyond the said period of thirty days for presenting the same.

Sec. VI. Appeals may be taken from the superior courts to the supreme court by either party from all final judgments excepting in actions where the amount in controversy, exclusive of interest and costs, does not exceed two hundred dollars; provided, however, that this exception shall not apply to prohibiting an appeal in cases involving the validity of an ordinance passed by an incorporated town or city. The party obtaining judgment shall not take an appeal after receiving any money paid or collected thereon.

Sec. VII. Appeals in all cases hereafter tried must be taken within six months from the time the judgment is rendered. In all cases heretofore tried they must be taken within six months from the time this act takes effect; but the time allowed the appellant by the pre-existing law shall not be enlarged. Where the appellant is under legal disabilities at the time the judgment is rendered he may have his appeal at any time within six months after the disability is removed.

Sec. VIII. At the time of taking his appeal, the appellant shall file with the clerk of the court below, an assignment of errors which shall set out separately and particularly each error asserted and intended to be urged. No appeal shall become effective unless such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted, or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to in full, whether

it be in instructions given or instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it.

Sec. IX. All records shall be printed under the supervision of the clerk of the court below and in certifying the transcript to the supreme court, he shall cause two copies to be made thereof, the one to be filed in the supreme court and the other for delivery to the appellant from which to print said record. It shall be the duty of the appellant to cause the record to be printed in such form as the rules of the supreme court may require and to file twenty-five copies thereof in the office of the clerk of the supreme court within such time as the rules of said court may prescribe. The supreme court shall have power by rule to prescribe what portion of said record shall be printed.

The foregoing sections are submitted to the Association, not as formal parts of an act to be recommended to the legislature, but to give a general idea of the manner in which this committee believes appeals should be proceeded with. They are taken from statutes of older states, or from the rules of Federal courts, long tried and intelligently approved. Your committee very earnestly recommends the adoption of the changes proposed by the report, and it confidently submits to the Association its belief that, if the records in all cases appealed to the supreme court are reduced so as to include only matters material to the error complained of, and the record is printed so that each judge can intelligently inform himself of what the case is about, then all complaints against our supreme court, at least as at present consituted, will disappear, sincerely believing that we will be able to give the fullest confidence to the court, if the court is given a fair chance to earn it; and this agitation, we believe, also, will induce greater caution and circumspection on the part of the judge.

All of which is respectfully submitted.

CHAS. E. MILLER, Chairman.
WILL G. GRAVES.
J. W. BRYAN.

Senator Graves concurs specially:

I heartily concur in so much of the foregoing report as assails our present method of making up a record for the supreme court in appealed cases, and am of the opinion that a revision of the present system somewhat along the lines of that suggested in the report is eminently desirable.

I believe, however, that it is useless, and I am inclined to think, needless, to attempt to secure such revision by an act of the legislature. For three sessions of the legislature I endeavored to secure

the passage of an act remedying the present system in the manner pointed out in this report. At the last session of the legislature I endeavored to secure the passage of an act conferring upon the supreme court, explicitly, power to make rules governing such matters. These bills I have always been able to get through the senate, but never through the house, and I do not believe there is much hope for the future, in the light of the past. I have come to the conclusion, however, that the supreme court has power to cover all these matters by is rules, and I believe if the State Bar Association will in unequivocal terms demand a change in the present system of making up records for the supreme court, along the lines indicated in the foregoing report, and urge the supreme court to adopt rules making such changes, that the supreme court will act in the matter.

I therefore suggest such action instead of an adoption of the latter portion of the report pledging the State Bar Association to secure legislation to govern the subject.

Respectfully submitted,
WILL G. GRAVES,
A Member of the Committee.

Hon. W. P. Bell declines to concur in the report of the committee. *To the Washington State Bar Association*:

Gentlemen—I, the undersigned, a member of the committee on Judicial, Administration and Remedial Procedure, am of the opinion that this state has a superfluity of statute law, and as there will be another meeting of this Association before the next business session of the legislature, that the committee should make no recommendations of change therein or additions thereto in the matter of procedure or otherwise, at this time.

W. P. BELL,
Member of Committee.

THE PRESIDENT—Gentlemen, you have heard the reading of this report. What do you desire to do with it?

MR. POST—This report is quite important so far as it suggests changes of the statutory law, and I imagine members of the Association do not feel competent to pass on the question right now, and I therefore move you that this report be made a second special order of business after the noon recess today.

Seconded and carried.

Recess was here taken, upon motion, until 1:30 o'clock p. m.

AFTERNOON SESSION.

MR. PRESIDENT—Gentlemen, the first order of business this afternoon is the special order provided for this morning, to-wit: the mater of the constitution and by-laws. What shall we do with them as they are read?

MR. SHANK—Mr. Chairman, I move that they be read section by section and acted upon as such.

Seconded and carried.

MR. PRESIDENT—Mr. Secretary, will you be kind enough to read, section by section?

MR. KELLOGG—I move that unless objection be made to a section as read that it be considered adopted.

Seconded and carried.

MR. PRESIDENT—If there are no objections, as the Secretary pauses after reading them, they will be considered as adopted.

Article I read by the Secretary.

Article II, Section 1, read by the Secretary.

Article II, Section 2, read by the Secretary.

MR. SECRETARY—Mr. Chairman, I make this suggestion, that this particular section of Article II go over until we come to the other part.

MR. PRESIDENT—Well, we will pass that then.

Article III, Section 1, read by the Secretary.

Article III, Section 2, read by the Secretary.

ATTORNEY GENERAL BELL—Mr. President, I move you that we strike out the words "resided in this state two years." I think any person who has been admitted to the bar of this State should be admitted to the bar of the Association.

Seconded.

MR. PRESIDENT—You have heard the motion, gentlemen. Is there anything to be said upon it?

MR. POST—I would like to inquire what the present constitution and by-laws say about it.

MR. SECRETARY—Any member in good standing in the courts of the state.

MR. SOL SMITH—I think the Article should stand as read. He should be a man of some moral standing in any community and he should not object to establishing that reputation, and he cannot do it without a residence of one or two years.

The motion to strike, being put to the house, carried.

MR. PRESIDENT—It will be stricken out.

MR. SHANK—Mr. President, I move you that the amendment read as follows: "And practicing in this state for one year."

Seconded.

THE PRESIDENT—Is there anything to be said upon that motion?

MR. EASTERDAY—Mr. Chairman, yes, sir. This proposition gets down to this, that somebody has been admitted to the bar. Is he a desirable citizen then? If not, he should not be admitted. When he is admitted to the bar it does not require one year's residence nor three years' residence or any other term of years, to establish his right to communication among his fellow men and to practice in the courts of justice.

MR. SHANK—Mr. Chairman, membership in this Association ought to mean something. Now, it does not hurt any man to reside in this state a year before he is admitted to membership in this Association, and any man who comes here and expects to reside here should not be unwilling to remain one year before coming into this Association. He can associate with his fellow-members of the bar.

MR. SMITH—In reply to my brother, Mr. Easterday, in his statement that a certificate of admission to the courts of this state should entitle him to admission to this Bar Associa-

tion, it seems to me a strange proposition. Strange men have been admitted to the courts of this state and to the practice of law. I remember distinctly one of them who was admitted to practice law in this state, practiced for one year and, at the end of this same year, he was disbarred, and yet, at the unanimous recommendation of this bar, he was reinstated, and I have the assertion of a distinguished member of the bar present, that within twenty-four hours afterwards he stole one hundred and sixty acres of land.

MR. VANCE—Mr. Chairman, I am the man, I presume. I would like to say this, though, Mr. Chairman, in connection with that, that we are not here as a club at all. The Bar Association is not a club. We are not blackballing members, of course, and, as Mr. Easterday states, any man that is decent enough to appear before the Supreme Court ought to join us for the purpose, not of raising any individual affairs, but for the purpose of elevating the profession generally. But what Mr. Smith has in mind—I don't remember the particular hundred and sixty (Laughter)—but that hasn't anything to do with the question. It seems to me that any man who is fit to practice before the Supreme Court—and I am not admitting anything when I say that—he is fit to join this Association. What is the use of our pleading the statute of limitation?

MR. LUND—It seems to me this matter is fully covered by an elaborate system here for admission. You provide, later in this constitution, for the submission of all names to a committee and, if that committee does its duty, it will investigate the qualifications of any applicant for admission and if he is not eligible they will so report it, and I think perhaps we might just as well put five years in it as one, if you are going to put any limitation at all. I support the proposition that no limitation be made, but that it be left to the discretion of the committee, where the matter should properly rest.

MR. PRESIDENT—The question is called for, and the motion of Mr. Shank, as I understand it, is to the effect that before one can become a member of this body he must have resided as a practicing attorney in this state for one year. Those in favor of that motion will say aye; contrary no. The noes have it; the motion is lost.

Article III, Section 3, read by the Secretary.

Article III, Section 4, read by the Secretary.

MR. MORGAN—Mr. Chairman, a matter suggests itself to me, that the words "present and voting" should be inserted there, inasmuch as, if a name is challenged, four-fifths of those present must vote for the admission of this person. All persons not voting, as I understand it, would be counted against him. There might be a dozen or more men who had no impression about it at all and would not vote. I think, under a strict construction of this rule, the person would be rejected. I move that that be amended to read "four-fifths of those present and voting."

Seconded, put to the house and carried.

Article III, Section 5, read by the Secretary.

Article III, Section 6, read by the Secretary.

MR. JONES—It seems to me that leaves a dangerous opening in our by-laws. There ought to be some method of determining who these honorary members shall be. You know it is very simple to come up here and move that such and such a man be made an honorary member, who lives in some other state, and of course nobody will object, if someone makes a nice speech in his favor. It seems to me that it ought to be an honor to be an honorary member of this Association. I move that this be amended by adding "that such honorary members be proposed and their names submitted to the Committee on Membership and reported only at the next annual meeting."

Seconded, put to the house and carried.

Article IV, Section 1, read by the Secretary.

GENERAL BELL—I move you that this section be amended by striking out the words "vice president."

Seconded.

MR. PRESIDENT—Anything to say concerning it?

GENERAL BELL—My object in making the motion is that, in the first place we have no occasion to use a Vice President, except as a matter of honorary position, and very frequently there is some question as to precedence, that is, the Vice President being a candidate for President at the next election, and, if we have no Vice President, everybody on the floor has a chance for that position. Again, it has been rather the precedent that the position of President shall be filled from the county or town where the next convention is to be held and then it has been sometimes a question whether it should go to the town of the President or of one of the Vice Presidents. Heretofore we have had, I believe, four Vice Presidents, and if we strike out "Vice President," everybody on the floor has an equal opportunity for the presidency, and we have never had any use for a Vice President and it is simply an honorary position.

The motion is put to the house and carried.

Article IV, Section 2, is read by the Secretary.

MR. SHANK—Strike out the word "vice president."

MR. PRESIDENT—That will go out without a vote, as I understand it.

Article IV, Section 3, read by the Secretary.

MR. PRESIDENT—Unless there is objection, we will consider the words "vice president" stricken there.

MR. TERHUNE—I would suggest then, to make it an odd number, that we make it five trustees.

Seconded and carried.

Article V, Section 1, read by the Secretary.

Article VI, Section 1, read by the Secretary.

MR. SHANK—It seems to me that the time specified is not proper; that is, the first Monday. It should not be on Monday in any event. I think the experience of this Association has shown that probably about Thursday is the best time. It gives Saturday for the clam bake and two days for the Association. I would like to move an amendment, say the last Thursday in July. It seems to me the last Thursday in July would be preferable. It gives the full month of August for vacation.

Seconded.

MR. PRESIDENT—Is there anything to be said upon it?

MR. VANCE—I do not desire to be captious, but I can't see any particular reason for saying the last Thursday in July rather than the first of August. I am a believer in moveable feasts and when the clam bake is ripe I am willing to come any time. I do not see why we should set any specific date. Why not leave it to the Executive Committee to fix whatever time seems to them desirable and proper?

MR. POST—I would just like to make one suggestion with reference to the date. East of the mountains the hottest part of the summer is the last week in July and the first week in August and, while the first week in August might be a very good time for the Association when it is held west of the mountains, sometime the first half of July would be the better time when the Association meets east of the mountains, and, therefore, I think the suggestion made by Mr. Vance is a good one, to leave this matter to the Executive Committee.

MR. EASTERDAY—Mr. President, here is another proposition. I hope this motion will prevail because in fixing a day certain when we must go to the bar meeting there are liable to be very many things, such as feast days or conventions or something, that would practically incapacitate a large number of us

from being there. For instance, the first Monday in August or the last Monday, or any other time, is liable to be a primary day for a special congressional election in the Second district, and in such case Mr. Langhorne and the other candidates would be busy at that time.

MR. TERHUNE—I suggest we make it the last Thursday of July or such other time as may be selected by the Executive Committee. Well, that is provided for by the last paragraph of the section.

MR. SHANK—I suggested the last Thursday in July simply to call out discussion of the matter. I think we ought to have due regard to the conditions which prevail over the state and the probability that the earlier meetings would be preferable for east of the mountains, but I do not agree with the General——

MR. VANCE—Which one?

MR. SHANK—As to there being no time fixed, and his argument is that it may interfere with some other fixed appointment. Now, it seems to me that, in order to have this meeting the success that it should be we ought to have a time fixed so that the lawyers can make their appointments accordingly and the courts may make their assignments accordingly, but, to leave it up in the air all the time, simply means we are trying to find out for weeks ahead just when the meeting is to be, to arrange our appointments accordingly. For instance, this meeting. For five weeks we have been trying to find out when this meeting was going to be held, and it has been difficult to arrive at that fact and it has been embarrassing because of other engagements. I would be glad to accept an amendment to make it earlier in July, but it seems to me there ought to be some fixed time.

MR. VANCE—Then, if your Honor please, to make the matter

more certain, I suggest that it be at the full moon in dog days. (Laughter).

GENERAL BELL—I agree with Brother Shank that there should be a fixed time and then, if some occasion arises whereby it should be changed, the following section provides for that being done by the Executive Committee, but we should have a time fixed so that people generally can make their arrangements to attend about that time, and it should be Thursday, it seems to me, so we can close our convention by Sunday and be able to get home. I do feel that we ought to have it fixed for Thursday instead of earlier in the week and that it should be a day certain rather than to leave it open until some late time.

MR. POST—What was the last amendment that was seconded?

MR. PRESIDENT—I think, if I remember right, that the time be fixed for the last Thursday in July or such other period as the Executive Committee might determine upon.

MR. SHANK—I will accept the amendment if my second will accept it.

Accepted by the second. Motion put and carried.

Article VI, Section 2, is read by the Secretary.

Article VI, Section 3, is read by the Secretary.

GENERAL BELL—I move we change that to twenty-five; that on the request of twenty-five members of the Association a meeting be called.

Seconded, put to the house and carried.

Article VI, Section 4, is read by the Secretary.

MR. KELLOGG—I move that twenty-five be substituted.

Seconded.

MR. JONES—I move a substitute, that it be twenty.

Seconded.

MR. PRESIDENT—Gentlemen, I do not know but what I am

confused as to where we are. I think the motion was that the figures twenty-five be substituted instead of fifty and that was re-amended by twenty instead of twenty-five.

MR. SECRETARY—That is correct.

MR. PRESIDENT—I do not understand that either the amendment or substitute has been seconded.

A MEMBER—There was a second to the first amendment to make it twenty-five.

MR. PRESIDENT—There was no second, that is, heard, to the amendment to the amendment, and that leaves it twenty-five. Anything to be said upon it?

MR. KELLOGG—Mr. President, I think that fifty is entirely too many. We have just made this constitution to provide that a meeting must be called at any time on the request of twenty-five members, and I think when we are going to have a meeting at the call of twenty-five members we ought not to have a quorum of a less number than those instituting the call, and, if they are not on hand to take up the matter which they have asked the President to call a meeting to consider, then this Association ought not to consider that matter or any other matter.

MR. POST—If there is anything to come before the Association there ought to be enough here to consider it, if it is an important matter. Fifty is a very small number. We are now meeting at a place very far distant for some of us, at one side of the state, and there are more than fifty present. I do not think there should be any meeting at which any action should be taken by this Association unless there are at least fifty persons present. I am opposed to this amendment.

GENERAL BELL—It may be necessary to have some record made of the action of this Association on the matter stated in the call. It may be that a great many members of this As-

sociation will be in perfect harmony with the action to be taken or have no objection to it at all, and yet it be inconvenient for them to attend the meeting. Now, this is a regular annual meeting of the Association here, and we have only just a bare few over fifty in attendance. In a special meeting we could hardly hope to get over fifty. It seems to me it is too many to ask in order to form a quorum, because if any one has any objection he can be here, but to stop the wheels of this organization and prevent the doing of any business unless we have fifty present seems to me wrong. I think this motion should prevail and that twenty-five should be a quorum to entitle this organization to do business.

MR. KELLOGG—Mr. President, Article VI. of the old constitution says nine members shall constitute a quorum.

MR. POST—But that was adopted a good many years ago.

MR. PRESIDENT—The question is called for. The motion, as I understand it, gentlemen, is that the figures twenty-five shall take the place of fifty. All those in favor of that motion will say aye; contrary no. Carried.

Article VII, Section 1, read by the Secretary.

MR. JONES—One committee that it seems to me is important and that we usually have, doesn't appear in that list, and that is the Committee on Obituaries. It seems to me that another standing committee should be added to that, and therefore I move that a Committee on Obituaries be added to that list of committees.

Seconded, put to the house and carried.

MR. GEPHART—I move a further amendment to that Article, that the word "admission" be changed to "membership."

Motion seconded, put and carried.

Article VII, Section 2, is read by the Secretary.

Article VII, Section 3, is read by the Secretary.

Article VIII is read by the Secretary.

GENERAL BELL—I think at present the annual dues are only two dollars, and I don't see any real need of changing it. We have money in the treasury now, and have all of the time, and I move you that that section be amended by striking out the word "three" and inserting the word "two" with regard to dues.

Seconded.

MR. SECRETARY—I will say this, that as Mr. Bell says, there is some money in the treasury, but I will say that there are bills coming in for the expense of the Investigating Committee traveling around the country that will take all the money we have on hand.

The motion is put to the house and lost.

Article IX, Section 1, is read by the Secretary.

Article IX, Section 2, is read by the Secretary.

MR. EASTERDAY—Mr. President, and gentlemen of this Association, if you will hear me for a few moments, because I realize that ninety-nine out of every one hundred members of this Association are liable to be outlaws. This thing reads to be "convicted of crime." Evidently this committee, when they constructed that, had not read the new criminal code. What are the crimes today ——

MR. TERHUNE—May I interrupt just a moment? On the suggestion of Mr. Post I had intended to change that to "conviction of crime involving moral turpitude."

MR. EASTERDAY—I will yield, then.

Article IX, Section 2, is read as amended.

Article IX, Section 3, is read by the Secretary.

MR. VANCE—Mr. President, that raises the same question that we considered before. If a man is a competent member of the bar to practice before the Supreme Court is he not a competent member here, and if for any reason he might be disbarred

or suspended, should not his membership in this body follow the action of the Supreme Court before which we all practice, without any further action on the part of the Association? Suppose one were disbarred and reinstated for cause before the Supreme Court. That means that he is fit to practice law, as they say, and they are entitled to say it. Then, it seems to me, that we should disregard anything but their action, unless he has forfeited his membership for some other reason. We should not say, "You are still entitled to practice before the Supreme Court, but you have got to come before this select Association of ours and be reinstated by a three-fifths vote," or whatever it may be. I do not think that this is the intent of the Association, and I therefore move that the latter section be rejected.

Seconded.

MR. TERHUNE—It seems to me that the mere reinstating before the Supreme Court should not reinstate him in this Association. The very fact that he has been reinstated in the Supreme Court is not any proof that he has been morally reinstated. It does seem to me that any man who has been disbarred and reinstated should not be entitled to retain membership in this Association.

MR. SMITH—It seems to me that merely because the Supreme Court thinks he is fit to practice before it, that may not disbar him to be a member of this Association. If he has been unjustly disbarred, he may safely trust his brother attorneys here to do him justice.

MR. VANCE—The reasons advanced from the amen corner do not appeal to me. The standard we have established before is the admission to practice before the Supreme Court. Now, if they find a reason justly to refrock any one whom they have just unfrocked, it seems to me we have nothing to do with it. Suppose that some erring brother should, by some indiscre-

tion, be disbarred and the Supreme Court say, upon reconsideration, "Why, now, you have eaten your husks; you can come back in," what are we to say? "Why, yes, you are good enough to practice before the Supreme Court and all the courts of this State and the Federal judiciary as well, but you are not good enough to associate with us." Now, that won't do. I do not think the gentlemen of the committee have carefully considered the matter. Let him come. Give him a chance. The rules provide how you can expel a member and how we can take him back. We ought, at any rate, to elevate the standard, and then say, if the Supreme Court re-establishes him, that his standing is still the same before the Association that it was before. Leave it that way. I do not see any reason to change the rule.

MR. GEPHART—It does not seem to me that the reasons stated by the gentleman who has just taken his seat are very good. I think if we are to vote upon a membership originally there is no reason why we should not vote upon it after a man has once ceased to be a member, and I think if he wishes to be reinstated he ought to trust his membership to this body, and that if he has once incurred the displeasure of this Association by the violation of its rules, he ought to submit his right to membership to this body. I think the Article as submitted should be adopted.

MR. JONES—It seems to me there is one more reason that I supposed my brother would furnish, and that is this: A man may have been disbarred by the Supreme Court, and he is then dropped by this Association. He goes around among his fellows and to the press and he says how mean an organization this is and calls it all kinds of names. Then the Supreme Court reinstates him, and we then ought to have an opportunity of saying whether he is a fit man to be a member of this Association.

MR. PRESIDENT—The motion is, gentlemen, to strike out

these words: "Reinstatement to practice shall not reinstate to membership in this Association unless by vote of the association upon recommendation of the Committee on Membership." The action is to strike that which I have just read. All in favor of the motion will please say aye; contrary no. Division is called for. Those in favor of the motion will please rise, and the Secretary will count.

THE SECRETARY—Nineteen.

MR. PRESIDENT—Those opposed will please rise.

MR. SECRETARY—Thirty-one.

MR. PRESIDENT—The vote is nineteen to thirty-one. I declare the motion lost, and the section stands accepted.

MR. VANCE—That was only on the motion to strike out. The motion to adopt has not been made. I leave it to the Chairman whether he should not put a motion to adopt the section.

MR. SECRETARY—I make this point of order. The motion was, at the beginning, that all sections be declared adopted unless there was objection.

MR. VANCE—And the section has not been passed.

MR. SECRETARY—Mr. President, I move the adoption of the section as read.

Seconded.

MR. VANCE—Mr. President, I want to say just one word and I am not going to detain you any longer upon that, but I really and seriously think we are making a mistake to adopt that. If we adopt this section we are saying, if a man is unfortunate enough and if he is criminal enough—and the terms are apt to be synonymous—to incur the displeasure of the Supreme Court and be disbarred and then they reconsider the case and say "You can come back," we say, "No, you have been dropped; and you have got to be submitted to the Committee on Membership, and if they don't recommend that you be reinstated you

have lost your standing as a lawyer forever, although you can practice in the courts, but the Membership Committee cannot admit you—would not admit you and therefore you cannot come back into the society of lawyers." A private club, that is all we are; nothing else in the world! I think, gentlemen, it is a serious matter. I think it is a mistake to do that. The minute we do that we put ourselves in this attitude: We say, "All right; the Supreme Court may say a man can practice, but we, the Bar Association, will not let him come into our councils and talk with us about matters and advise us, if he has any advice to give, as to what is best for the profession." Why, gentlemen, that is neither law nor politics, Republican or Democratic, and I do not think we should stand for it.

MR. EASTERDAY—I do not fancy, for one moment, I can influence one vote here, but I should be derelict to my conscience and my duty to the bar if I did not at this time enter my earnest and vigorous protest, and in as many different languages as are spoken throughout the united world. We, as lawyers, have an exalted idea of what the Supreme Court should be. It should be robed in white——

A VOICE—No, black; black.

MR. EASTERDAY—And be unassailed—be above suspicion, and yet we say here, by this action—we hold up our lily-white hands to high heaven and say, "We are more holy than thou." Mr. President, to adopt a different standard save and except that of admission to practice law before the highest tribunal in this state, is to arrogate to ourselves as an Association and to this committee something that is radically wrong.

MR. AGNEW—It seems to me that, having already adopted the standard that to become a member of this Association all that is necessary is to be a practitioner in good standing before the Supreme Court and the other courts of the state, if we now attempt to vary it by the adoption of this section, which cer-

tainly is directly in the teeth of it, we are attempting to undo something that has already been done, and it is such an action that we ought not to entertain it.

MR. PRESIDENT—It seems to me there is a conflict, but the chair will entertain it.

MR. JONES—It seems to me there is no conflict at all.

MR. CROSS—Just a moment. I have been listening with considerable interest to these several discussions and I have tried, as Henry Ward Beecher used to say, "to learn some reasons why," and I will submit, Mr. President, that if we are to set up a committee in lieu of the judgment of the Supreme Court we are going a long ways, and I do not think it is safe. I do not think that is what we intend to do. I think, as a body of lawyers, we do not intend to set up the judgment of a committee, who have not any other interest—should not have any other interest, perhaps, than to serve their own judgment, against the judgment of the Supreme Court, which is our High Over All. The judgment of five members of a committee against the judgment of the nine members of our Supreme Court is not safe. If the committee won't recommend I do not know how you are going to get it before the Association. If there were some provision that permitted this to be brought before the Association wholly——

MR. LUND—There is a provision somewhere for reinstatement on appeal.

MR. TERHUNE—I was just about to read it to you.

MR. DOVELL—I desire to move the previous question.

Seconded, put to the house and carried.

MR. PRESIDENT—The question is called for. The matter to be voted upon is the adoption of this section as it was read. All those in favor of the adoption of this section as read will please say aye; contrary no. The ayes appear to have it.

A division being called for, the section was adopted as read by a vote of thirty-one to twenty.

MR. SECRETARY—I want to propose an amendment here, to be numbered Article X and entitled "Ethics," the Article to read as follows:

"The code of ethics adopted by the American Bar Association at Seattle, 1908, shall be the rules of ethics of this Association and all members of this Association shall be deemed to have subscribed thereto and be governed accordingly."

I move the adoption of the amendment.

Seconded and carried.

MR. SECRETARY—I will read Article X as Article XI, now that this has been inserted.

Article XI read.

MR. JONES—I move the adoption of the constitution as now read.

Seconded.

MR. SECRETARY—Mr. President, you know we passed one section.

MR. JONES—I will withdraw my motion for the present.

MR. PRESIDENT—We will go back to that section, read it and take action upon it.

Article II, Section 2, is read by the Secretary.

MR. MCCAFFERTY—I move its adoption.

Seconded, put to the house and carried.

MR. JONES—Now, I move that the constitution, as read and adopted by sections, be adopted as the constitution of this Association.

Seconded and carried.

Article I, Section 1, of the by-laws is read by the Secretary.

MR. HUDSON—I move to amend by adding to it the words "or by order of the Executive Committee."

Seconded and carried.

Article I, Section 2, of by-laws, read by the Secretary.

Article II, Section 1, of by-laws, read by the Secretary.

Article II, Section 2, of by-laws, read by the Secretary.

MR. JONES—I move an amendment, that there be added to the duties of the Secretary, "that he shall receive all moneys due the Association and turn same over to the Treasurer."

Seconded and carried.

MR. SHANK—I move the adoption of the section as now amended.

Seconded and carried.

Article II, Section 3, of by-laws, read by the Secretary.

MR. SHANK—On the third line of the section, in order to make it harmonize with the other section, the words "collect and" should be stricken.

Amendment seconded and carried.

Article II, Section 4, of by-laws, read by the Secretary.

MR. SECRETARY—Mr. President, I move that the further consideration of these by-laws be postponed until after the next order on the program, the address by Mr. Babb.

Seconded and carried.

MR. PRESIDENT—Gentlemen, we have with us today James E. Babb, of Lewiston, Idaho, who has been asked, and who has very kindly consented, to address you upon the following subject: "Effect of Overruling Opinion of Court of Last Resort on Rights Acquired on Opinion Overruled." We will be very glad to hear from Mr. Babb, if he will come forward.

(For Mr. Babb's address see Appendix.)

MR. PRESIDENT—Mr. Babb, on behalf of this Association, I desire to thank you very much for your excellent and learned address, and assure you that we appreciate your coming here and talking to us.

MR. PRESIDENT—We will proceed with the reading of the by-laws, please, Mr. Secretary.

Article III, Section 1, is read by the Secretary.

MR. BYERS—In order to avoid the question and rule which these gentlemen are so strongly debating, I would move to insert in that section "for membership or reinstatement to membership."

Seconded.

MR. PRESIDENT—Would you, Mr. Secretary, read the Article as it is and as it would be, to show the amendment?

Read by the Secretary.

GENERAL BELL—Mr. President, is this the committee that was referred to a moment ago? I understood then that there were only five members to the committee. This shows there are nine.

MR. TERHUNE—Mr. President, for the committee I changed it from five to nine.

The motion is put to the house and carried.

MR. JONES—I move to change the section, in that the meetings of the committee be changed from three to six months.

Seconded and carried.

Article III, Section 2, of by-laws, is read by the Secretary.

MR. MCCAFFERTY—I move as a substitute for the section just read, Section 6 of the old by-laws, and I do it with two purposes in view: One because the chairman of the committee, who prepared the by-laws, informed me last night that he did not have these by-laws at the time these now under consideration were prepared, and, second, because this old by-law provides for an appeal. I therefore move the following substitute:

"Section 6. Whenever complaint is made against a member of the Association for misconduct in his relations to the Association, or in his profession, the member or members preferring such complaint shall present it to the President, in

writing, subscribed by him or them, plainly stating the matters complained of, with particulars of time, place and circumstance. Upon receipt of such complaint the President shall refer it to a committee of three members, to be appointed by him, or to the committee on grievances if such committee shall then be in existence. The committee to whom it shall have been referred shall, without delay, cause to be served upon the accused a copy of the complaint and a notice to appear within ten days and answer the same. Upon answer made, or after the expiration of the time given therefor, the committee shall appoint a time and place of trial and notify the accused thereof. The committee shall have power to summon witnesses to give testimony before it. A member of the Association being so summoned shall, if he refuse to appear and give testimony, be liable to be proceeded against for misconduct and be tried therefor as herein provided. The committee shall try the case according to the rules of evidence in civil cases. At the conclusion of the trial, the committee shall make findings of fact and render its decision thereon. If the accused be found guilty, the committee shall fix the penalty for the offense, and for this purpose shall have power to render judgment of temporary or indefinite suspension from membership in the Association against him, or of expulsion from the Association. Such judgment of suspension or expulsion shall go into effect at the expiration of ten days from the rendition thereof, unless meanwhile the accused shall have taken an appeal therefrom to the Association at its next annual or adjourned meeting. If the decision be in favor of the accused, and judgment of acquittal is entered, the complaining witness or witnesses shall have the right to appeal within such ten days to the Association as aforesaid.

"The substance of the evidence taken at the trial shall be reduced to writing by the committee. The decision and judgment of the committee, with the evidence and findings, shall be forwarded to the Secretary of the Association, who shall report the same to the Association at its next annual or adjourned meeting. If the judgment of the committee be appealed from, the case shall be tried *de novo* by the Association upon the record before it; provided, however, that if the Association shall be of the opinion that the trial committee improperly admitted

testimony, it may, by a majority vote, disregard such testimony, and it may, by a like vote, hear evidence improperly rejected and excluded by the committee, for which purpose it may exercise the powers herein granted to the trial committee. The Association may modify, affirm, or reverse any decision or judgment of the trial committee, provided, however, that a vote of three-fourths of the members of the Association present shall be necessary to affirm a judgment of expulsion."

MR. SOL SMITH—I do not know that I understood the reading of the section correctly, but I surely understood that there is a provision there by which not only members of this Association may be prosecuted by the Grievance Committee, but any member of the bar committing unprofessional conduct may be prosecuted. Was I correct?

MR. SECRETARY—Yes, sir.

MR. SOL SMITH—But that part is not included in this Section 6 of the old constitution and by-laws. I think the Grievance Committee should prosecute anybody guilty of unprofessional conduct.

MR. KELLOGG—I move that the words "five" where they appear in the Article first read, giving five days notice on the charges, be changed to "ten." Five days is too short.

Seconded.

MR. VANCE—I think this is a very serious matter. I do not believe half of those present understand what it means or what the substitute means. I would like, personally, an opportunity to consider it. If you want to vote on it off-hand, of course I cannot vote, but I would like to know what that means, because to me it looks to be serious. I will say this, that as to the Grievance Committee, I have a grievance myself, and I do not think their power should be enlarged at all. We all want to examine that because the Grievance Committee, even under the old constitution as read by Judge McCafferty as a substitute, has power to blacken a lawyer's character. All

men read a libel and few men read a retraction. I think their powers are too large now and if this is an enlargement of it I want to know it. I think we ought to consider this because, to my mind, it is the most serious question in our constitution and by-laws. If we are going to attempt to enlarge those powers and allow a commission or a committee, I don't care who they are, to bring charges, institute them and therefore incur publicity, we ought to know it and we ought to understand it right now, and, for that reason, I think we ought to defer the consideration of this section until we have a chance to consider it. I move, therefore, Mr. President, that the consideration of the section be deferred to another time that may suit the convenience of the Association.

Seconded.

MR. PRESIDENT—I wish you would fix some time.

MR. VANCE—Well, until the next session of this body, whatever that may be, this evening or tomorrow. Say eight o'clock tonight, so we can have time to consider it.

The second accepts the amendment.

Motion is put to the house and carried.

MR. PRESIDENT—Proceed with the next section.

MR. TEATS—I move that the consideration of the by-laws be postponed until eight o'clock this evening.

Seconded. Motion put to the house and lost.

Article III, Section 3, is read by the Secretary.

Article III, Section 4, is read by the Secretary.

MR. VANCE—I move to strike out the last words "with power to recommend." It is inconsistent with what we have already adopted.

MR. PRESIDENT—The latter portion of that section reads, "With power to recommend to the Association, at a special meeting or otherwise, such action as they may deem expedient."

MR. VANCE—Those are the words I move to strike out, your Honor.

Motion seconded.

Article III, Section 4, is read the second time.

MR. VANCE—My motion was rather inadvertently made. I want to come back to everything after the word "system." "And it shall be their further duty," etc.

MR. LUND—I rise to a point of order. That section, under our constitution, it seems to me, is absolutely out of order. We cannot adopt it. Our constitution provides that we cannot, as an Association, recommend any person for official position and, under that section of the constitution, this provision of the by-laws, it strikes me, is out of order, entirely inconsistent and ought not to be considered.

MR. TERHUNE—I cannot see that it is inconsistent at all. Under the constitution this Association cannot either endorse or recommend any person for a position, but that does not prevent this committee from investigating the fitness of any person who is a candidate for a judicial position and, if it deems him unfit, it has the right to make that known.

MR. TEATS—I think the point of order is well taken. You are putting us into politics and the constitution says you cannot.

MR. VANCE—I made a motion here to strike out a certain portion. Does the point of order go to my motion?

MR. LUND—No; carrying the motion would effect the same thing as if the President held it out of order.

The motion to strike was then put to the house and carried.

Article III, Section 5, is read by the Secretary.

Article III, Section 6, is read by the Secretary.

MR. VANCE—Why that last provision should be incorporated into our by-laws I cannot see. I move that it be stricken out.

What right has the Bar Association to go into and report upon some particular man's fitness or otherwise? That is a matter of law. We have nothing to do with that. The legislature determines the conditions and the Supreme Court determines the fitness. Why should we empower a committee to butt into that? If a man shows the fitness that the law requires he should be entitled to a license.

MR. PRESIDENT—Do I understand your motion is to strike all except the first few words?

MR. VANCE—Yes, sir; all after the words "and practice law in this state."

Motion seconded.

MR. PRESIDENT—The section will read, if this motion carries, as follows: "The Committee on Legal Education and Admission to the Bar shall consist of five members. They shall report, from time to time, such changes as they may deem it is expedient to make in the system of legal education and admission to practice law in this state."

The motion was put to the house and lost.

MR. TEATS—I move the adoption of the section as read.

Seconded, put to the house and carried.

Article III, Section 7, is read by the Secretary.

Article III, Section 8, is read by the Secretary.

Article III, Section 9, is read by the Secretary.

Article III, Section 10, is read by the Secretary.

MR. JONES—There should be a section 11, showing the duties of the Obituary Committee. I have prepared one here:

"That the Committee on Obituaries consist of three members, who shall report to the Association the death of members, and also perform proper duties in regard to eulogies and resolution upon the memory of our deceased."

I move its adoption as Section 11, of this Article.

Seconded and carried.

Article III, Section 12, is read by the Secretary.

Article IV, Section 1, is read by the Secretary.

Article IV, Section 2, is read by the Secretary.

Article IV, Section 3, is read by the Secretary.

MR. SECRETARY—I would move to amend that by adding "such further distribution as the Executive Committee may order."

Seconded and carried.

Article V is read by the Secretary.

Article VI is read by the Secretary.

MR. MCCAFFERTY—I move to strike the latter part with reference to giving notice.

Seconded, put to the house and carried.

Article entitled "Standing Rule" is read by the Secretary.

MR. PRESIDENT—I understand, gentlemen, that at eight o'clock this evening the by-laws will be further considered with reference to the section concerning the duties of the Grievance Committee.

MR. MORGAN—We who come from Hoquiam down here would like to extend an invitation to the members of the Association to visit us. We have a town there of about fourteen thousand people and we would like to see you down there.

MR. MCCAFFERTY—I move it be accepted forthwith.

MR. KELLOGG—Mr. President, I move that all by-laws, save and except Section 2, of Article III, be now adopted as the by-laws of this Association.

Seconded.

MR. KELLOGG—And I move the previous question.

Seconded, put to the house and carried.

MR. PRESIDENT—All in favor of the adoption of the by-laws except Section 2, Article III, reserving that article for this evening——

MR. VANCE—I think the previous question has not been moved.

MR. SECRETARY—I rise to a point of order; ——

MR. PRESIDENT—I understand that we are now voting upon the final adoption of these by-laws with the exception of the section with reference to the Grievance Committee.

MR. VANCE—May I be heard upon it just a moment?

MR. SECRETARY—I rise to a point of order. The previous question was carried.

MR. VANCE—There was one provision, in one of those sections, empowering a committee of five to do certain things, and I thought that the Association ought to have its attention called to it. Now, this is an omnibus order, as I understand, to prevent our calling to the attention of those gentlemen who were not present that one particular item. I thought the chair announced that we could move to reconsider any particular provision tonight. I didn't understand that motion to close the question preventing us from doing that. I want to understand if that is the sense of the house. There is one question I think the house ought to be enlightened on—I don't know, I may be right or I may be wrong, but I thought it wouldn't be anything unfair to have the opportunity of taking up tonight, outside of section three——

MR. SECRETARY—I insist upon my point of order.

MR. PRESIDENT—I think, General Vance, that you are hardly talking to a question of privilege, are you?

MR. VANCE—Well, I would very much like to have the privilege.

MR. PRESIDENT—As I understand the situation at present, it is for the final adoption of all these by-laws with the exception of that portion with reference to the Grievance Committee. The question is called for.

MR. VANCE—I move that we take a recess until 7:30 this evening.

Seconded.

MR. KELLOGG—I rise to a point of order. The previous question has been called for.

MR. PRESIDENT—As I understand the rule—in which I am probably mistaken—the motion to adjourn will precede the other motion. I think that is the situation. The question, then, is as to whether or not we will adjourn until 7:30.

MR. STRATTON—I appeal from the decision of the chair.

Appeal seconded.

MR. JONES—I move to amend the motion by substituting that when we do adjourn, we adjourn until eight o'clock this evening.

Amendment seconded. Carried.

MR. VANCE—I move that we now adjourn.

Seconded.

MR. PRESIDENT—I know of one man in this assemblage who does know something about parliamentary law. If that were an essential to the practice of the profession I ought to be suspended indefinitely. I will ask the Vice President, Mr. Shank, to take the chair for a few minutes.

Vice President Shank assumes the chair and submits to the house the previous question for vote.

MR. EASTERDAY—I move that we now adjourn.

Seconded.

VICE PRESIDENT—The motion is out of order.

MR. EASTERDAY—Mr. Chairman, I appeal from your decision on my motion at this time that we now adjourn.

Appeal seconded.

VICE PRESIDENT—Gentlemen, the chair has been appealed from. Shall the decision of the chair be sustained? Those

in favor of sustaining the decision of the chair will please stand. The Secretary will please count.

MR. SECRETARY—Thirty-six.

VICE PRESIDENT—Those of you who are not in favor of sustaining the chair will please stand, and the Secretary will count.

MR. SECRETARY—Ten.

VICE PRESIDENT—The chair is sustained. The question now before the house is the adoption of these by-laws, as they have been read, section by section with the one exception which will be heard tonight. Those of you in favor of the adoption of these by-laws say aye; contrary minded no. They are adopted. What is the further pleasure of this convention?

Upon motion, adjournment was taken until eight o'clock this evening.

EVENING SESSION, EIGHT O'CLOCK P. M.

MR. PRESIDENT—Gentlemen, if you will kindly come to order, we will proceed with the business of the day. The special order of business is the adoption of the section of the by-laws relating to the Grievance Committee. As I understand, all of the constitution has been adopted, and the motion now is that Section 6 of the old by-laws, printed in 1894, be submitted for Section 2 of Article III, as read by the Secretary. That is the situation, and that motion was seconded and was under discussion when it was laid over. The amendment reads as it was read this afternoon by the person offering the amendment, with some little alterations which I understand have been made since, and I will read that portion containing the alterations:

"Whenever complaint is made against a member of the Association or any attorney of this state for misconduct in his relations to the Association, or in his profession, the member of members preferring such complaint shall present it to the President, in writing, subscribed by him or them, plainly stating the matters complained of, with particulars of time,

place and circumstance. Upon receipt of such complaint the President shall refer it to the Committee on Grievances. The committee shall, without delay, cause to be served," etc.

That is the amendment. The old by-law read a little differently. I believe, gentlemen, the matter is open for discussion.

MR. VANCE—I think it would be well to read the entire article—the old one.

Read by the Secretary.

MR. POST—Mr. Secretary, will you kindly read the proposal of the committee.

Read by the Secretary.

MR. PRESIDENT—Is there anything to be said on this motion, gentlemen?

MR. WALKER—Mr. President, I have listened to the reading of the substitute and the reading of the recommendation of the committee. It seems to me that the motion for the adoption of the substitute should not carry and that we should adopt the recommendation of the committee, and for two reasons. I think that the casual reading of these two different propositions shows that the completer procedure is outlined in the recommendation of the committee, and I believe it would almost go without saying that, the duty of drafting this proposition having fallen to this committee, it has probably received care and attention and that we are likely to have a completer and better procedure as offered us by the committee than as offered us in the substitute suggested by Brother McCafferty. I hope that the substitute will fail. I believe we have the better procedure in the report.

MR. LANGHORNE—Mr. President, I believe this substitute is better than the report of the committee. I would like to have the chairman of that committee give his reasons for drafting it as they have drafted it. Undoubtedly they have given it a great deal of thought and attention and can give more expla-

nation in support of it than any one else, and I would like to hear from the chairman of the committee.

MR. PRESIDENT—Does the chairman of this committee desire to say anything?

MR. TERHUNE—If Mr. Langhorne desires it, I shall. The old Section 6 failed to provide for procedure against a member of the Association who had been guilty of misconduct towards a member of the Association or in his profession, and after hearing the testimony the only thing the committee could recommend was suspension or expulsion from the Association. There was no method whereby the committee or any member of it could proceed in court for any proceeding of disbarment or suspension, and no method was there provided whereby for proceeding against a member of the bar not a member of the Association. Mr. McCafferty undertakes to do that by amending it to read against "any attorney of this state." This goes into it more fully. The committee went fully into the constitution of the Pennsylvania State Bar Association, the Illinois State Bar Association, the Seattle Bar Association and one or two others, and when the Seattle Bar Association constitution was made up it was made up from those of New York City and Philadelphia, and this follows, almost *verbatim*, the procedure outlined in the constitution of the Seattle Bar Association. There are three kinds of misconduct that can be proceeded against. First, as against a member of the Association for misconduct in relation to the Association or in his professional or personal relations, and it provides that upon investigation, the committee shall report its investigation to the Executive Committee, and that committee shall authorize the Grievance Committee to bring charges in the courts, and the committee also recommends to the Association such action as it thinks the Association should take in the matter, such as expulsion or suspension, provided that no member can be

expelled from the Association except by a two-thirds vote. The second is for proceeding against a member of the bar not a member of the Association and provides the method whereby the investigation shall be made, it reports to the Executive Committee, and provides for the bringing of charges against the member of the bar in court if this committee thinks that necessary. The third refers to the general interests of the profession, the practice of law and the administration of justice, and sets forth that the Grievance Committee shall investigate the matter and then report its conclusions to the Executive Committee, and they shall authorize the Grievance Committee to take such action as it deems necessary. The balance of it provides that when no charges, shall be made but matters are brought to the attention of the attorney of the Association which, in his judgment, require investigation, he shall bring the charges. It contains everything that is contained in the old by-law substantially, with other additions, setting out in detail the different degrees of procedure.

MR. STERN—Mr. President, may I ask the chairman a question now? Have you found that, in those other associations, it requires a two-thirds vote? Personally, it seems to me that a majority vote is the proper vote. What have you found?

MR. TERHUNE—Every one of those I have examined, and I have examined six or seven of them, requires a two-thirds vote for expulsion.

MR. SULLIVAN—What was the object in leaving out, substantially, the matter of trial according to the rules of civil procedure?

MR. TERHUNE—There is nothing in it about civil evidence. The presumption is that lawyers will try cases according to the rules of evidence as they are used to try them.

MR. SULLIVAN—It seems to me that it ought to specify trial as in civil cases, because they will hear hearsay and it will be

published, and that is the case notwithstanding they are lawyers. They forget sometimes that they are guided by the rules of evidence.

MR. JONES—We are now talking about the substitution of this old rule 6 for the new rule 2. If rule 2 should come up, I will myself offer an amendment in accordance with Mr. Sullivan's suggestion, but I do not think that is before the convention at this time. The question is whether we should substitute the old rule for the new one.

MR. MCCAFFERTY—Mr. President, that the members of the Association may understand my motive in making the substitution, I will explain. It seems to me that the original section as proposed in the new by-laws simply goes into detail in the matter suggested by the chairman of the committee, but the substitute that we have lived under for fifteen years guarded all misconduct of every kind. It did not go into details such as are gone into in the new, but it covers every point of view and every misconduct of any kind, whatever it may be, that may be brought against any member of the profession or connected with his profession. Now, it seems to me, also, that the right of appeal is given and is more pronounced in connection with the substitute, and that is a right that every member should have—the right of appeal. It is a matter entirely within the discretion of the committee whether or not the committee shall, if they see fit, present the evidence to the Executive Committee; it is simply leaving the matter within their discretion, but, with the substitute, they must refer all evidence, and the trial, in the substitute, is *de novo* in the Association, and that is what I ask for and that is what I claim should be in here, the right of trial *de novo* in the Association, if the committee come to the conclusion that any action should be necessary. There are other things in connection with the matter that are left out entirely by the sub-

stitute. I am not in favor of a paid prosecutor. It don't seem to me necessary in an association of this kind of, at least supposedly, honorable men that it should be necessary to hire and pay a prosecutor in order that we may have honorable men in our midst. I did not like the manner in which it was proposed. I do not like it now. It seems to me that the efforts of any lawyer connected with this Association may be called upon at any time by this Association, and it should be considered an honor by any member of this Association to act for the Association without compensation. I think that a man representing this Association before any court, would have a better standing, from every point of view, if it was known that he was not a paid prosecutor. If it was known that he was simply an honorable member of the bar, duly appointed by the Association to come in and see that justice was done, he would have a high and better and nobler standing before the courts and before the people, and, so far as the man himself was concerned against whom complaint was made, he would have less of which to complain if the man was simply appointed by the Association to see that right and justice was done to the one side or the other than if a paid prosecutor should be sent into court to see that this man was prosecuted. I do not like the idea. This is one of the things to which I seriously object. Now, the question of appeal and the fact that any member of the bar, inside or outside of the Association, can be complained of and that the remedy is here and that the committee may do whatever it sees fit in the matter, we then see that no harm or injustice can possibly be done, by precedent or otherwise, against any man as a member of this Association, and, as I have already stated, I believe it is an honor to be a member of this Association, but we have no right to leave to the vote of five or six or seven men the question whether or not a man shall be deprived of the honor of being or retaining membership in this Association.

MR. TERHUNE—Mr. President, may I answer that in regard to the appeal? The old by-laws provide that the committee itself must determine the guilt or innocence. It is therefore necessary, in order to get the matter before the Association, that an appeal be taken, but, in the new constitution, there is no adjudication of guilty or not guilty, but the Executive Committee merely recommends to the Association such action as it deems the Association should take in the matter and the Association then acts in the first instance upon the matter. It is unnecessary for any appeal to be taken to the Association because there is no judgment at all until the Association acts upon the recommendation of the Executive Committee.

MR. MCCAFFERTY—And it does not provide for a trial *de novo* before the Association.

MR. KELLOGG—The whole trial is before the Association.

MR. MCCAFFERTY—The new subdivision does not provide for a trial. We understand what that means when a report is made to the Association of that kind. Take it in the condition we are today, busy and with a whole lot more work anticipated, more than we will do today and more than we will do tomorrow, is it likely that we shall have a trial *de novo*, when we know that the matter is to be heard over and over again? The man who is charged with the offense is the man that is aggrieved and he is the man we should think about. When he knows he has this trial before the committee and that then he can have his trial later on *de novo* before the Association, then he knows and feels that there is something coming later on, even if he loses, but I think he ought to have that right in the matter.

MR. JONES—Mr. President, I have great respect for the argument of counsel, but it seems to me that in reading the English language these new by-laws have none of the faults which have been attempted to be pointed out. Counsel says

there is no appeal provided in this new by-law. How can there be an appeal from this Association, from a trial that takes place by the Association itself? The old law provided for trial before the Grievance Committee and appeal from its decision to this body. This new law provides exclusively for trial before this Association as a whole. It provides for a species of grand jury, so to speak. The Grievance Committee listens to the evidence, the story of the parties as properly told, and I shall offer an amendment, when the time comes, to make it properly proven as in a court of law, but they listen to the story and get the evidence and find out whether it is based upon anything, and they then may recommend to the Executive Committee that there is ground or there is no ground. The Executive Committee then reports this matter to this body as a whole, not any particular committee or individual that has the right to decide, but the whole body, then this body as a whole, by a two-thirds vote, after hearing the whole case, is compelled to determine whether this member is to be retained, suspended or expelled. How can you appeal from that? This body is the final body of the Association. I hope that is clear to every member of this Association. Now, I want to speak about this exactly as if I were going to be the first man to be tried under this new by-law. If my conduct or your conduct, or anybody's conduct in this Association or as a member of the bar, won't stand this kind of an investigation, then he ought not to vote upon the question that is before this body now. This organization is here for a purpose. One brother says we have had fifteen years of that old by-law. That is just exactly the trouble; we have had fifteen years of it, and what have we done? It has become a sort of well known fact among ourselves that it made little difference what we did; that we could file any sort of an old charge or make any old statement against a lawyer and it never would be brought before this Association. We had the same thing, in effect, in our bar associa-

t'on in Seattle. We adopted, then, just about such a set of by-laws as this in the Seattle Bar Association and we got busy. It is true we spent a little money and hired a lawyer to prosecute a few shysters, but the results were such that nobody applies for membership in the Seattle Bar Association who is afraid to have his name and character investigated. It has been said against this new by-law that it is wrong to have a paid prosecutor. Now, I am going to offer an amendment to this, if it ever comes before the Association, that there shall only be a paid prosecutor after the Executive Committee justifies the investigation in each particular case. There may be many cases in which any member of this Association would be glad to act as prosecutor. There may be a case in which it will not be necessary for the Grievance Committee or Executive Committee to hire a prosecutor, but there occasionally comes a case where a man has to give his whole time, perhaps for weeks or months, to make a successful prosecution against a man who is making a strenuous fight, and that ought to be left, probably, to the Executive Committee and Grievance Committee as to whether they should hire such a prosecutor. We would think it ridiculous for any other association of men of this size to come in here and say that they were going to have some method of removing members, for charges which are practically criminal, and did not expect to hire a lawyer. We are all lawyers, but don't we all know that there are times when we could not think of giving our time for the weeks of exclusive time that may be necessary to prosecute such cases as this without being paid for it? We ought not to expect it of our own members. I think our old law was a good one, but it lacked what this one has. It lacked the right "meat" in it by which a prosecution will take place. Under this new one there is continuous prosecution and the finding out of results as to whether a man ought to be prosecuted or not, and then it is brought before the whole body and the

whole body determines it. I strenuously oppose the adoption of the substitute.

MR. PRESIDENT—The question is called for. The question is as to whether or not the article which has been read as a substitute shall be substituted for the proposed new by-law. All in favor of the substitute will please say aye; contrary no. The noes have it.

MR. JONES—I desire to move an amendment to Section 2, of Article III, of the new by-laws, page 2, line 8, as it appears upon the typewritten copy, at the end of the paragraph which reads: "The committee shall hear and decide the case thus submitted to it, and shall determine all questions of evidence," by adding to it the words: "In accordance with the rules of evidence in civil cases."

Amendment seconded and carried.

MR. JONES—I desire to move another amendment. I move to amend the last paragraph of the section to read as follows:

"The said attorney of the Grievance Committee shall receive no compensation unless the Executive Committee shall provide differently in each case, and thereupon such compensation shall be paid out of the general funds of the Association."

Amendment seconded and carried.

MR. STERN—I move to exclude from the second paragraph on page 2 of that section the words on the twelfth line, "and, if requested by either party, may in its discretion report the evidence taken," and add, "may, and if requested by either party, shall report the evidence taken."

Amendment seconded and carried.

MR. JONES—I move the adoption of the by-law as amended. Seconded and carried.

GENERAL BELL—I believe we are through with the by-laws now. There was a report read this forenoon from the Committee on Judicial Administration and Remedial Procedure.

That purported to be a report of the entire committee. I happen to be a member of that committee and, for several reasons, I felt I could not sign the report, and would now like to submit a minority report.

(See report of committee page 27).

MR. MILLER—Mr. Chairman, I desire to say that the Committee report, as made this morning, shows that the Attorney General did not concur in the report, but, either through oversight, possibly by embarrassment, I forgot to read that part of it. Before consideration is entered into by the Association as to these several reports, I want to say just a few words by way, perhaps, of an additional oral report, and they are these, that, so far as the committee is concerned, it was not wedded and is not wedded to any particular system or method. The central idea of what the committee wanted—that is, four members of the committee—is this, that the record going before the Supreme Court upon appeal shall be of sufficient brevity so as to include only such matters as are material to questions arising upon the appeal, and, second, that the record shall be printed or put in such shape so that each judge who is called upon to consider the appeal shall have a copy of the record and that the court shall not be dependent upon a single judge for the facts of the case upon which they are to base their opinion. As to the method we pointed out—that is, the majority of the committee—was we believed to be the best method. Now, there are other methods, for instance, the Illinois method, and Judge Cotton tells me they have the same method in Oregon, and that is this, that the parties are compelled to print an abstract of the record. Of course, the sufficiency of that is left, naturally, to the parties, just the same as the statement of facts contained in the brief is left to the parties filing the brief. Now, that may be sufficient. It may answer our purpose; I do not know as to that. In Idaho seven copies of the record are requested to be furnished by the party taking the

appeal, but it may be typewritten. At any rate, it requires a copy of the entire record for each judge, but there they have only three judges. Again, Senator Graves is of the opinion that the Supreme Court could formulate rules that would meet or obviate the difficulty which we find at the present time in taking an appeal.

MR. POST—Mr. President, I think that all members of the bar of this state are agreed that our appellate procedure is not perfect. In fact, many of us think it is quite imperfect. I think it is also true that different members have different ideas as to how it should be changed, some of them having what might be called radical ideas and some of them thinking that changes should be very slight. I believe it also to be true that the members of the Supreme Court have felt, for a number of years, that some changes ought to be made in the appellate practice, but that they have felt very diffident about suggesting any changes themselves and have hoped that either the changes would be brought about through legislation or through the recommendation of this Association, but this Association has been unable to act, and probably never can act so as to suggest any particular change, because of lack of time to thrash out bills and because there are men with whom we differ very materially in our ideas about the changes to be made, and it is also true that it is impossible to get any change through the legislature. I believe that the Supreme Court would welcome any suggestion made to them by this Association, and, with that idea in view, because I believe, with Senator Graves and with other members of the bar, that some very material changes in the practice act, or in the appellate practice, rather, can be made through a change in the rules and, as I say, with that idea in view I move to amend the motion to adopt, as I believe a motion to adopt the report of the committee has been made——

MR. PRESIDENT—I believe there has been no motion made to adopt.

MR. POST—Then I move to adopt the majority report of the committee, amending, however, or substituting, perhaps, the recommendation of the committee as to the adoption of their proposed bill, by the adoption of the following resolution:

"We realize that there are material defects in our appellate practice and are satisfied that most, if not all, of such defects may be cured by rules of the Supreme Court, and therefore, without expressing any opinion as to the merits of the suggestions made by the committee, we respectfully recommend to the Supreme Court that it adopt further and more complete rules concerning bills of exception, statements of fact and other matters of procedure, and that the President of this Association appoint a committee of five to confer with the Supreme Court on this subject, and that the members of this Association send to that committee their views as to the changes that ought to be made."*

I move the adoption of this in place of the other.

Seconded.

MR. PRESIDENT—Gentlemen, it has been moved and seconded that the report of the committee as read be adopted except that portion with reference to the procedure bill and, instead of that, the resolution which Mr. Post has just read be passed. Is there anything to be said?

MR. SHANK—Mr. Chairman, this matter involves the same question that we have had before the Bar Association at each annual session for the last ten or fifteen years, and we are here at the meeting of the Association with a limited time and unable to give these matters the proper consideration which they should receive. It has occurred to me that the better way out of this would be to refer this matter back to the committee with instructions that they put the matter in permanent form and have it printed and a copy of it mailed to each member of

*—The last clause was added at request of Mr. Stern, see page 81.

the Association so that the members may have it to consider before they come up to the Association a year hence, and, in that manner, we will be able to consider it in the same calm, deliberative manner that we consider the questions connected with the American Bar Association. That is the method which they pursue and, to that end, Mr. President, I move you that this report be recommitted to the committee with instructions to make such changes as they may see fit, or not, if they so elect, and have that report printed and circulated and distributed among the members of the Association and the matter be heard a year hence.

Seconded.

MR. MCCAFFERTY—I move to amend that motion and include "and that they may, however, if they see fit, consult with the Supreme Court with reference to the method."

MR. SHANK—I accept the amendment.

MR. POST—It seems to me, Mr. President, that Mr. Shank's motion means that we shall never do anything. Whether that is the purpose or not, that will be the result. If this committee goes to work upon a bill, they will have other business to attend to, they will spend a day or two or three days talking about this bill and other bills, but there will be nothing ever done. This has come up several times in that way and we all know that under that sort of procedure we will never do anything. We will just have this appellate procedure from now until eternity, and it is too long. I believe anybody that has satisfied himself at all must believe that the Supreme Court has power to change the procedure in part by rule, and that the only way we ever can get it changed is by suggesting to the Supreme Court that they do it, appointing a committee to act and co-operate with the Supreme Court and work out some changes in this system, and that it will be better. We can get it that way, and I don't believe that there is any other

way of getting it. If you don't want it, why, adopt Mr. Shank's motion. If you want to go on in the same old way, which everybody must admit is extremely bad, adopt that, because that will be the result, but, if you want some change, if you want some improvement, and we need improvement mighty bad——

MR. LANGHORNE—If we adopt this method recommended by the committee, wouldn't it be ten times more costly to litigants?

MR. POST—I do not know exactly what has been recommended, but I do know that if we adopt the practice and put it up to the legislature it would never get passed. It might, possibly, get through the senate but it would never get through the house. The committee is proposing a bill for the legislature, and I am not opposing that bill. All I am contending is that the committee ask the Supreme Court to adopt some rules upon this subject. They know, I think, more than we do as to changes that ought to be made in their system. We all know that the procedure in the Federal Court is governed by rules. That is the way it ought to be in our court.

MR. BRYAN—As a member of that committee, we really haven't very elaborate thoughts; the rank and file of the committee haven't very thoroughly, perhaps, discussed or worked together on the report, but it was gotten up and submitted to us and, as to the general principle, we all concurred heartily. There may be some question about a few details, but I believe that the substitute for the two motions before the house would relieve us from the present difficulty. I think that the report of the committee ought to be merely filed and published in the proceedings, as it will have to be, and it will go to every member of this Association and, having done that, we can then take up the consideration of this resolution, and the whole report of the committee will have to be published as part of the proceedings. I therefore move, as a substitute for all the mo-

tions before the house, that the report of the whole committee be filed and published as part of the proceedings.

MR. SECRETARY—Mr. President, I think that a person who has observed very closely many appeals will have to concur with Mr. Post. Now, you must bear in mind that recently the court has been divided into departments and it is necessary to make some changes and now would be the proper time to make some new rules. Anybody who has attended the Association right along will agree with Mr. Post that each year we bring this up and we put it over until the next year. We never get anywhere. There is no reason, however, why all these motions may not be harmonized. There will be another meeting of the Association before the next session of the legislature. I think we can gain some new influence before that time to bear upon the legislature. This would be an excellent way to start it. We can find out something this year and we could appoint a committee and take it up with the Supreme Court. It would not interfere with anything. I hope that Mr. Post's motion will prevail, except I think it ought to be modified to this extent, that the committee that is appointed should act with an idea of carrying out, as far as possible, the recommendation of the committee report now before us.

MR. EASTERDAY—Mr. President, I want to move intelligently—I confess it is a pretty bad proposition—but I would like to take this thing up methodically and in order. I appreciate that the first motion here is to recommit. In the event of that not passing, I then desire a division of this question. Your Honor has presented the question here that we shall adopt this committee report save and except the part covered by the resolution of Judge Post. I cannot vote and vote my sentiments by aye or nay on that, because I wish to vote against the adoption of that part of the report and I do want to vote for the resolution of Judge Post, so, when the motion to re-

commit is disposed of, then I ask, as a basic and fundamental right, for a division of this question that I may vote against the committee report and in favor of the resolution.

MR. SHANK—Mr. President, I think that probably there are others here who did not catch the full import of Mr. Post's resolution. I am inclined to think it is a practical way to meet the present situation. My motion was not aimed, at all, at delaying this matter but, rather, to put it in such permanent form that we could intelligently handle it a year hence. I am inclined to think that this resolution of Mr. Post's, which he has offered as a substitute, ought to prevail. It passes it up to the Supreme Court to make such rules and regulations as they feel they have the right to make and it will be an aid in the right direction, and that is what we are here for. I, therefore, with the consent of my second, would like to withdraw my motion to recommit, in order that we may vote upon the other question.

The second consents.

MR. MILLER—Mr. President, I want to say just a few words, because this is a matter I have taken a great deal of interest in for the last three years, and this is the third time now that this matter has come before the Association for action of some kind. As I said before, the committee is not wedded to any method. What the committee is solicitous about is securing a change. As a matter of fact, the state of Washington has the crudest appeal known to any state in the Union. That is the fact, and the only thing we are eager about is that something shall be done, even if you cannot better the present system more than ten per cent, and, as I said in the outset, the committee is not wedded to legislative action. My own opinion is that is the only way we can reach it, because the present method of appeal is governed by statute, but I am heartily in favor of the resolution offered by Mr. Post,

and, above all, I am anxious that some action of some kind shall be taken and that we may get a few steps nearer, at any rate, the goal that I believe every lawyer who looks at the thing seriously and earnestly must be in favor of, in view of the difficulties we have had in this state.

MR. LANGHORNE—What is the matter with the practice act?

MR. MILLER—The difficulty is this, that we do not settle a statement of facts; we do not settle a bill of exceptions. When a man wants to take an appeal, instead of going to work and boiling it down and putting it in intelligent shape so that the court won't lose half its time in reading it over, instead of directing them to the real essential matters, which he ought to do, what does he do? He goes and pays a stenographer for a certified copy of his stenographic notes and he serves that on the opposing party as a statement of facts and it is not a statement of facts at all.

MR. LANGHORNE—He don't have to do that. The statute provides——

MR. MILLER—A statement of facts is provided for, but not a word is said in the statute about a bill of exceptions, and two years ago I presented a bill of exceptions to a Judge of the Superior Court and he said: "Why, no such thing is known to our practice," and within two or three days, as I am told by an attorney at Tacoma, a bill of exceptions was presented to a Judge of the Superior Court at Tacoma and ignored because he said it was unknown to the practice.

MR. LANGHORNE—There are several things unknown to some members of the bar.

MR. MILLER—But when you make a statement of facts you can boil it down, you can save the court work, but if you do that you are the exception; none of the others do it.

MR. LANGHORNE—Mr. President, it seems to me that these

alleged defects in our practice act are more imaginary than real. If any attorney will simply take the time he will find that he can take a bill of exceptions instead of a statement of facts into the Supreme Court. When that practice act came up scores and scores of appeals were dismissed because attorneys did not properly construe the act. Are you pretending to say here tonight that you want another act to set the Supreme Court busy construing it for the next two years? You can take bills of exception up at any time. You can make up a bill of exceptions in the trial of a case and you do not have to file it and serve it as provided for the filing and serving of a statement of facts. You can reduce your exceptions at the time of the trial or after the trial is ended. You can file your bills of exceptions. All you have got to do under the present practice act—and I think Judge Parker will confirm me—is to set out so much of the evidence as the court rejected under proper proffer and take it up to the Supreme Court. What is the use of incorporating all the evidence in a statement of facts when the only errors you are bringing your appeal upon consist in the admission or rejection of testimony? Now, if you are going on here to enact this act that is proposed, you are simply making appeals prohibitive on a certain class of litigants. You have to print an abstract of the record. You have got to print your briefs now. If you adopt this act as proposed here, you have to print the abstract of the record, then you have to print an abstract of the statement of facts, and hence appeals would be lost to hundreds of clients. These appeals cost something. I am reliably informed that in Idaho, where they have a practice act something like that proposed by the gentleman, an appeal cost forty-eight hundred dollars, getting the statement of facts printed. I do not believe you want that sort of a law in this state.

MR. TEATS—I am in favor of this substitute because it does

not amount to anything. The people who squeal about the practice act are the fellows who don't read their statements of fact when they write their briefs. The man who will read his statement of facts and give a digest of his statement of facts in his brief will never have occasion to howl at the Supreme Court for a mis-statement of the statement of facts. Our appellate procedure is about as good as you can get. It is as good as you can get it in the Federal procedure and less expensive. If you want to be so particular as to have an abstract of the testimony, do as the man who hasn't any more money than he can spare in the Federal practice. Boil it down from the record as printed by the stenographer and you haven't any occasion for any fight over the facts and you have a statement of facts as Mr. Miller wants it. That doesn't cost anything—the boiling down. If you go to meddling with the practice act you are going to get us into another box where the Supreme Court has to construe a new law, and a whole lot of fellows who don't pay much attention to the statute and who take it "by guess and by gosh," always get left, so that if we adopt the proposed substitute and send a committee down to talk to the Supreme Court, why, it is nothing but a very nice opportunity for a committee of five to go down and talk with them and possibly get a little information for themselves, and that is all.

MR. SULLIVAN—Mr. President, I am heartily in favor of Mr. Post's resolution. I think the argument made against it begs the question. Now, nobody is undertaking to change the practice act. This resolution only appoints a committee of five to confer with the Supreme Court and consider the question of making improvements in the rules of the court relating to getting cases into the Supreme Court by way of bills of exception and statements of fact. Now, I am perfectly well aware that under the present law you can prepare a bill of

exceptions or statement of facts in a short form. You do not have to give every question and answer and the law doesn't need to be changed, but the trouble with Mr. Langhorne's argument is that, while you can, physically, draw your bills of exception and statements of fact, attorneys will not do it and judges will not, as a rule, sign them and, until there is a rule of the Supreme Court making it compulsory, the method will remain as it is now. I think the present situation is objectionable on two grounds. In the first place, it makes the attorney careless; he does not boil it down as he ought to. In the second place, I think two-thirds of the charges that are made and insinuations about errors, mis-statements or any class of mistakes made by the Supreme Court judges is because of the immense amount of immaterial testimony that comes to that court that they have to read and I do not believe that any nine judges or any twenty judges can take some of those statements of fact and, without spending months on it, make a statement of what has been proven, or what has not, in a given case.

MR. LANGHORNE—What are you going to do with a case that you try there *de novo?* You have to take the testimony up then.

MR. SULLIVAN—Yes, that is true, but that is no reason that you should have the same system in a law case where you do not have a trial *de novo.* If it will relieve the court in any particular it is a good thing to adopt, and I believe it will, and I believe, furthermore, it is in the interest of clients because I believe they would have their cases better tried and better presented to the court and have a better hearing before that court. Now, this resolution of Mr. Post's, as I understand it, doesn't compel this committee to go there to advocate the printing of an abstract and all that matter, but it merely requires them to go there and confer with the Supreme Court.

Resolution is re-read by Mr. Post.

MR. STERN—Just a single suggestion that I would like to see added to that resolution. I am in favor of that resolution, but I think there should be some expression, from the members of this Association, sent to that committee as to their convictions in respect to this matter. Now, we might sit here until the next Bar Association meets and never thresh this matter out among ourselves. For that reason, it does seem to me that it would be proper to add to that resolution a suggestion that the members of this Association send to that committee their ideas as to the manner in which the practice should be changed. I move that there be added to that resolution "that the members of this Association send to that committee their views of the changes that ought to be made," so that the Supreme Court may know that the members of this Association are interested in it and what they may think of this matter.

MR. POST—I think Mr. Stern's suggestion would be proper and I am willing to accept it, that the members send to the committee their views about it and that this committee, when they present the matter to the Supreme Court, read those letters to the Supreme Court.

MR. CHESTER—I believe Mr. Cotton has ideas on this matter and we would like to hear from him.

MR. PRESIDENT—Mr. Cotton, we would be glad to hear anything you have to say on the subject.

MR. COTTON—Mr. President, I unfortunately practice over in this state, and usually have to take an appeal, and I think your practice, as it is stated and defined in the statute, in regard to statements of fact and bills of exception, is about the best practice I know of any place. The only difficulty that I think that anyone experiences is the fact that the courts and the bar do not understand generally that they have the right to follow the language of the statute, either get up a bill of exceptions pointing out the particular objections to the evi-

dence or instructions in a short form, or the full and complete statement of facts in their cases. Now, over in Oregon we have a section of the statute somewhat similar to Section 3 of this proposed act, that the objection or, rather, it should be exception, I think—the exception must be stated with so much of the evidence as is necessary to explain it and no more. Our Supreme Court has held that where a motion of nonsuit is denied, or instructed verdict is denied, that, necessarily, all the evidence has to set out. They have also held that if your exceptions to the evidence are scattered along, if this first exception involved the nonsuit or directed verdict, that they will pay no attention to it; that you have to pick out your objections to the evidence and objections to instructions and state them over again. Say you have seven or eight different causes of action. You have to state the evidence as to each cause of action separately. Now, practically, that is impossible, in a great many cases, without constant repetition. I settled a bill of exceptions the other day in which we took about seven days' time of the judge in chambers and then got through and filed the entire evidence as Exhibit A, with a certificate attached, in connection with each exception, that the evidence here stated was intended to be merely illustrative and should be modified, contradicted or changed by reference by either party to this Exhibit A. The result was we got in all the evidence and then got in about one hundred and fifty typewritten pages undertaking to set forth the particular exceptions. Now, your practice in full is the best possible practice I know of, namely, a short bill of exceptions directed to particular points of evidence or particular instructions where the points you intend to raise are susceptible of being raised in that way. If there is a directed verdict or request for nonsuit and all the evidence has to be set out, then set it out in the order in which it comes as a statement of facts with the statement of

your objections and exceptions as they appear, and I sincerely trust that you won't recommend to the Supreme Court any practice which won't give the attorney the option either of presenting his case by the statement of facts or by bill of exceptions, and, if that matter was clearly understood that you could do either, and the bench and bar both understood it, I think you would have a very simple and convenient practice. In fact, a great many of us prefer it owing to the situation in which we stand at present. If you take a case with ten causes of action and you move for a directed verdict there is lots of the evidence that relates to the different causes of action, and if you undertake to separate that and don't state it all, then our Supreme Court reserves the right to say: "You have not stated all the evidence necessary," and out you go. If you state too much, out you go again. We are in a situation just exactly like you had here about ten years ago when the Supreme Court, in every case practically, reserved to itself the privilege of not hearing your appeal on account of these technicalities connected with bills of exception.

After further discussion the resolution of Mr. Post was adopted.

MR. SECRETARY—Mr. Chairman, I desire to announce that right after the adjournment of this meeting there will be a meeting of the Prosecuting Attorneys in this hall.

MR. PRESIDENT—At this time I desire to say that I have a letter from the National Irrigation Congress saying that this Association is entitled to five delegates to attend the meeting to be held in Spokane soon.

MR. TERHUNE—I move that the President be authorized to appoint five members as delegates.

Seconded and carried.

MR. PRESIDENT—I will appoint that committee from Eastern

Washington; Messrs. A. G. Avery of Spokane, Frank Reeves of Wenatchee, Chas. P. Lund of Spokane, John H. Peddigo of Walla Walla, and Ira P. Englehart of North Yakima.

MR. PRESIDENT—We will proceed with the regular order of business. The report of the Committee on Legal Education and Admission to the Bar. Mr. Gephart is chairman.

The report of the committee is read by Mr. Gephart.

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Washington State Bar Association:

Higher education is an essential qualification for every candidate who seeks admission to the bar. Few men are sufficiently prepared to enter upon the study of law until they have attained a good knowledge of not only all common branches taught in our schools but also of the higher branches of learning. Therefore we believe that it is essential to the high standard of the profession of the law that all persons desirous of pursuing the law should lay a foundation by a thorough course in higher education before beginning the studies for admission to the bar. We believe that it is no argument that some men have studied law on a raft or carried their Blackstone to the plow-field, and obtained their knowledge of the law by those inconvenient means, and have risen to eminence in their profession, that the mind of the average man does not need the preliminary training before entering upon his legal studies. It is our opinion that students of the law should be required to devote much attention and labor to Blackstone's commentaries and to Kent's commentaries and to early histories of the law, and we believe that these authors should not be deemed unnecessary, but should be made a requirement for all students and should be among the studies required in the curriculum. While a few may by their extraordinary efforts become eminent lawyers without first having attended the higher schools of learning, we believe it will be conceded that we are doing a kindness to the average man who would enter upon the study of law, by requiring this higher education in order that he may plan his career along lines for which he is best fitted, whether it be of law or some other pursuit. No man is capable of reasoning well unless he has studied the art of reasoning. The legal profession is based upon reason and a member of the bar who is incapable of properly advising his client will often misguide those who depend upon the knowledge and information which the profession

implies that he possesses. Commerce and government are largely dependent upon the counsel and advice of lawyers, and a lack of proper training in the law may tend to bad government or strained trade conditions.

The lawyer has much to do in influencing the selection of the judges who preside over the court, and the fitness and qualifications of the judges on the bench is largely dependent upon the standard of the bar; therefore the better educated lawyers will influence the selection of men of learning for the bench, and those who look upon a preparatory education as an unnecessary qualification for the student of the law will look with as much indifference upon the qualifications and education of the man who seeks a place on the bench.

Your committee believe that the requirements for candidates for admission to the bar should be a good knowledge of the branches taught in our public schools and also a sufficient knowledge of certain higher branches of learning to enable them to pass a satisfactory examination in all such branches, as preliminary to the commencement of the study of the law. This principle has been, to an extent, embodied in a bill passed by the last regular session of the legislature, in what is know as House Bill No. 374, being an Act Relating to Attorneys and Counselors at Law, and embodies all of Chapter 139, Laws of Washington, 1909.

Your committee further believe that there should be a higher standard of knowldege of law adopted for candidates under examination for admission to the bar, and that candidates for admission should pass satisfactorily upon every branch or subject adopted for such examination. Your committee further believe that it is one of the very essential features of the legal profession that every candidate seeking admission to practice law in any of the courts of our state come with good credentials as to his honor and integrity, and that no candidate for such admission should be granted a license to practice law in our courts until such proper credentials are filed with the clerk of the supreme court.

In view of the foregoing declarations your committee begs leave to state that they received notice of their appointment by the President of the State Bar Association on the 29th day of January of this year, and that they immediately proceeded to plan a bill for enactment by the legislature, which was then in session, and thereupon they adopted the bill above referred to, which was enacted into a law and is now the law of this state with respect to legal education and admission to the bar.

Your committee beg leave to state that the law department of the State University of Washington have adopted a three years' course

of study in law for the students attending the law school of the university, and require one year of college work for all candidates for a degree before entering upon the study of the law.

We wish further to recommend that the committee on Legal Education and Admission to the Bar that may be appointed and occupy such position during the time of the session of the next legislature, frame a bill in accordance with the suggestions herein specified.

Your committe wish to add that they have embodied so much of the requirements herein recommended as they believed it possible to have enacted into a law. In truth, the bill as originally introduced and recommended by your committee for passage was considerably reduced and modified before final passage.

Your committee are gratified that they have been enabled to accomplish some of the objects which they believe very essential to a better standard of the legal profession in the State of Washington.

We respectfully submit the report:

JAMES M. GEPHART
LESTER P. EDGE
ROBT. F. BOOTH
I. B. KNICKERBOCKER
JOHN T. CONDON

Committee on Legal Education and Admission to the Bar.

Dated July 22d, 1909.

MR. SECRETARY—Mr. President, I move that the report of the committee be adopted.

Seconded and carried.

MR. PRESIDENT—The next order of business, I believe, is the report of the Grievance Committee. Is that committee ready to report?

MR. HIGGINS—Mr. Chairman, the Grievance Committee is not ready to report. We have one more meeting to be held tonight. I move that the report of the Grievance Committee be made the first order of business for the session in the morning.

Seconded and carried.

MR. SECRETARY—Mr. President, the first order of business for tomorrow is the report of the Committee on Uniformity of

State Laws. I move that we take up that report at this time. It is a short report.

Seconded and carried.

The report of the committee is read by the Secretary.

REPORT OF COMMITTEE ON UNIFORM STATE LAWS.

To the Washington State Bar Association:

Your committee on uniform state laws respectfully reports that during the past year some progress has been made on this subject in other states, but none in this state. The annual conference last year was held, according to the usual plan, at Seattle, during the four days immediately preceding the annual session of the American Bar Association, at the same place. The entire time of the conference was devoted to discussion and amendment of the proposed bills on, bills of lading, and on, transfer of title to shares of stock in corporations, but each of them was held over until another year, and at the coming conference in Detroit next month, the fourth tenative dráft of a bill on each of those subjects will be considered. The bills on, warehouses receipts, and on, sales, which were finally recommended by the conference more than three years ago, were introduced into the state legislature at the last winter's session, but both of them failed of passage. This is the second time that each of these bills has been before our state legislature and has been rejected.

The present state of legislation on uniform laws in other states is as follows: The negotiable instruments law last winter was passed by New Hampshire and Oklahoma, making thirty-eight states and territories in all. Wisconsin has passed the marriage and divorce act and the warehouse receipts act. The uniform warehouse receipts act has now been enacted in eventeen states, namely, California, Connecticut, Illinois, Iowa, Louisiana, Michigan, Massachusetts, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and Wisconsin.

Your committee desires particularly to call attention to the subject of the uniform divorce law, a bill which was based on the proposed uniform marriage and divorce act, recommended two years ago by the Divorce Congress at Washington, which was drafted by Judge Frater of the Superior Court of King County and earnestly advocated by him before the joint judiciary committee of the two houses last winter. Judge Frater seems to have met with scant courtesy and attention from the committee, notwithstanding his self-sacrificing zeal and large practical experience on the subject, and the bill was very peremptorily recom-

mended for rejection. It is perhaps not possible to procure the passage in this state of the uniform divorce act, exactly as proposed, but certain features of it, which were embodied in Judge Frater's bill are of great importance to the people of this state, and your committee respectfully recommends that this Association take steps to procure the enactment of such a bill as Judge Frater proposes, when the legislature is next met again for general legislation.

Any one who watches the course of discussion on political subjects of general interest to the people of the United States, in the newspapers and periodicals, must certainly be aware of the increasing importance of this subject and the growing interest in it. The speech of Senator Root of New York last winter, in which he called attention to encroachment of Federal Government upon the powers of the state governments in many matters of common concern, but not strictly of federal cognizance, at least as lawyers used to consider it, and warned the people that unless the states woke up and asserted their own powers and prerogatives and discharged their own duties on such subjects, the very large and important powers which they really hold would gradually be absorbed by the federal government, leading to vast concentration of political power, met a responsive echo all over the country. Another sign of the times is the action of the National Civic Federation in calling a national conference to consider the subject of promoting uniform legislation by the states, which will be held in Washington, D. C., on January 5, 6, and 7, 1910. President Taft is to make the opening address. This movement is being made with the heartiest co-operation of the officers of the National Conference on Uniform State Laws. Its object is to arouse a popular sentiment in each state to support the work of the commissioners and give them the cordial co-operation of the agricultural, laboring, manufacturing and other popular bodies. This progressive state, with its great transportation, manufacturing and commercial interests should be represented in that conference and have its proper share in so important a movement, and your committee therefore respectfully recommends that this body recommend to the Governor the appointment of commissioners to represent this state.

CHARLES E. SHEPARD, *Chairman.*
R. G. HUDSON (per C. E. S.)
E. B. PALMER
ALFRED BATTLE

MR. SECRETARY—I move its adoption.

Seconded.

MR. SULLIVAN—Would the adoption of this report carry with

it an endorsement of Judge Frater's bill? I move that the motion be amended by striking out all that portion of it which endorsed the bill of Judge Frater before the last legislature. The bill as originally introduced I am satisfied a great many could not agree with, and as this report endorses a bill prepared by one man and endorsed by him and is his hobby, I do not think we ought to adopt it.

MR. SHANK—Is not the proper procedure here to receive this report and place it on file first and then proceed to act upon the recommendations? That does not put this Association on record as in favor or against. Furthermore, I will say I am not prepared to vote in favor of it and I do not want here to be recorded as voting against it, and I am afraid that the motion, as it now stands, would mean that the Association go on record as against the bill, and therefore I move, as a substitute, that the report be received and placed on file.

Seconded and carried.

MR. SHANK—Now, there is one recommendation there that, as a matter of courtesy to the committee, we ought to consider, and that is with reference to recommending to the Governor the appointment of certain delegates. The committee seems to regard that as a matter of some importance. I think we have committed this matter to a body of men who have studied it and they are probably making the recommendation after some thought. For that reason I move that we approve that recommendation.

Seconded and carried.

MR. SECRETARY—Mr. President, at this time I would suggest that the Committee on Nominations should get busy and to that end would suggest that in place of the members of that committee who are absent others be appointed, so that we may have their report tomorrow morning.

MR. PRESIDENT—As there are but two members of that committee present, it will require the appointment of three members. I will appoint Mr. W. T. Dovell, who will take the place of Ira Bronson, Chairman, L. O. Meigs and L. F. Chester.

MR. PRESIDENT—I believe that is all, then, except miscellaneous business.

Upon motion, the Association adjourned until 9:30 o'clock tomorrow morning.

MORNING SESSION.

Friday, July 30, 1909, 9:30 o'clock.

MR. PRESIDENT—Gentlemen, if you will come to order, we will proceed with the business of the day. The first order of business this morning, according to the program made yesterday, will be the report of the Grievance Committee. Mr. Higgins is chairman of that committee.

MR. PRESIDENT—Mr. Higgins.

MR. HIGGINS—Mr. Chairman, the Secretary has asked me to read this report.

The report is read by Mr. Higgins and here follows:

REPORT OF THE COMMITTEE ON GRIEVANCES.

Your committee on grievances begs to submit the following report:

During the year numerous complaints have been submitted to the committee against attorneys residing in various parts of the state. The investigation of those complaints has involved a great deal of labor, and has required many meetings of the committee. If the matters considered by the committee were of the ordinary nature, a detailed report covering each one of them would be justified, but since they involve the honor and reputation of members of the bar, your committee believes that investigation which did not result in a recommendation by the committee that disbarment proceedings be instituted, or that

the accused attorney be expelled from the Association, should not be set out in the committee's report to the Association. It would be a grave injustice to a member of the bar to have spread upon the records of the Association and published throughout the state, an accusation not supported by sufficient proof to justify the committee in recommending action against him. Your committee has no precedent in this matter set by any previous committee of this Association to guide its policy, but following the custom adopted by the grievance committee of the Seattle Bar Association, with the work of which committee this committee is familiar, we shall make no report upon such charges as we have considered insufficient to justify affirmative action on the part of the Association, unless we are required to make such a report by the vote of the Association.

One exception will have to be made to the policy just outlined. Senator J. W. Bryan, of Kitsap County, a member of this Association, submitted to the Association a controversy involving certain alleged charges against him, and requested action by the Association. The matter was referred to this committee by the president of the Association with instructions that we take such action upon it as we deemed proper. Although the charges did not justify proceedings against Senator Bryan, he has asked the committee to report upon them, and the committee therefore submits the following report in reference thereto:

On January 11, 1909, Senator Bryan sent to the president of this Association a letter in which he alleged that Senator Robert F. Booth had stated to certain attorneys and members of the legislature of this state that Judge John B. Yakey, of the Superior Court of Kitsap County, Washington, had stated that he had in his possession facts that warranted disbarment proceedings against Senator Bryan, and that it was only a question of time when such disbarment proceedings would be begun. Senator Bryan requested an investigation and report in the matter.

To the extent that this matter is a personal quarrel between Senator Booth and Senator Bryan, your committee feels that the Association has no concern in it. We, therefore, made no effort to determine what statement Senator Booth actually attributed to Judge Yakey, in the conversation out of which the controversy arose. Our only purpose in this investigation was to determine whether or not Judge Yakey had actually declared to Senator Booth in the conversation on which Senator Booth based his alleged statement, that he, Judge Yakey, had in his possession facts which warranted disbarment proceedings against Senator Bryan. Upon that phase of the matter we have interviewed both Judge Yakey and Senator Booth. Judge Yakey has informed the committee that he did not tell Senator Booth that he had in his

possession facts which would warrant Senator Bryan's disbarment. He says that the only basis for such a statement lies in the fact that in the course of a casual conversation at Olympia with Senator Booth and one or two other gentlemen, he told of certain incidents that took place during the recent political campaign in Kitsap County relating to Senator Bryan's connection with the printing and publication of certain campaign circulars and dodgers which contained information that he, Judge Yakey, considered false and misleading. He says that thereupon some one of the gentlemen with whom he was talking declared that such conduct would constitute ground for disbarment. Judge Yakey says that he did not, in that conversation, attempt to put that or any similar construction upon the facts he had related, and Senator Booth confirms Judge Yakey's version of the conversation.

When Judge Yakey was asked by the committee whether or not he desired to present to the committee any charges against Senator Bryan, looking to his disbarment, or his expulsion from the Association, he informed the committee that he did not; and your committee has been given no further information in regard to this matter which justifies proceedings against Senator Bryan.

In the matter of the charges of Herbert N. DeWolfe against certain members or the Supreme Court of this state, your committee begs leave to submit the following report:

On June 18th of this year Herbert N. DeWolfe, a regularly admitted and practicing attorney of this state, residing at Tacoma, addressed to Governor M. E. Hay a letter in which he charged all of the judges of the Supreme Court of this state, except Judge Emmett N. Parker, with corruption in the decision of four certain cases which said DeWolfe had presented to the court. In his letter Mr. DeWolfe said that he was unable to state whether the cases referred to were decided erroneously for a monetary consideration or for political prestige, but he alleged that they were intentionally decided contrary to the law and the facts for reasons not appearing upon the surface, in direct and wilful violation of the oath of office of every judge participating in the decisions, and Mr. DeWolfe therefore charged that each of said judges was unfit either to sit as a judge or to practice law. Mr. DeWolfe requested the Governor to refer his charges to the legislature for investigation.

In a letter addressed to Mr. DeWolfe, dated June 19, 1909, Governor Hay refused to refer the charges to the legislature until Mr. DeWolfe should produce reasonable proof in substantiation of his charges. Without attempting to comply with the Governor's requirements, Mr. DeWolfe then addressed to each house of the legislature a communication similar to that addressed to Governor Hay, and

requested the legislature to institute impeachment proceedings against the judges whom he accused. The letter which Mr. DeWolfe sent to the Senate was, by the presiding officer of that body, sent to the president of this Association without its having been referred to the Senate. The lower House of the legislature upon receipt of Mr. DeWolfe's communication appointed a committee to investigate his charges. That committee met at Olympia on the 2nd, 6th, 7th, and 8th days of this month and listened fully to Mr. DeWolfe's charges and his attempt to sustain them. On July 1st, the day before the House committee began its hearing, Mr. DeWolfe sent to the president of this Association a letter in which he requested the appointment of a committee of the Association to investigate his charges in conjunction with the legislative committee. The letter, together with Mr. DeWolfe's letter to the State Senate, and a later letter addressed by him to this Association setting out his charges in detail, was referred to this committee by the president of the Association with instructions that the committee make such investigation of the charges as might be proper, and report at the present meeting of the Association.

Accordingly, on Saturday, July 17, the committee notified Mr. DeWolfe to appear before it at Seattle, Washington, on Tuesday, July 20, and present whatever proof he might have, or claim to have, in support of his charges. On the day Mr. DeWolfe was so notified he joined with the members of the committee in a written request directed to the Supreme Court of the state, asking the court to send all of the records in the cases referred to in Mr. DeWolfe's charges to Seattle, to be used at the hearing. At the appointed time and place a majority of the committee assembled to hear Mr. DeWolfe, there being present, of the committee, Messrs. George H. Walker, W. B. Stratton and John C. Higgins, Chairman. John W. Roberts, the fourth member of the committee, residing at Seattle, appeared later at the meeting. Frank Garrecht, the remaining member of the committee, residing at Walla Walla, was unable to be present.

Mr. DeWolfe appeared before the three members of the committee present at the commencement of the hearing, and announced that he would not proceed because he was not entirely satisfied with the membership of the committee. He declared that he took no exceptions to the committee as a whole, but that he would refuse to indicate the member or members to whom he objected, or the grounds of his objections. Desiring to expedite the hearing and to secure a determination of the matter before the present meeting of the Association, so that a report might be made by the committee at this meeting according to the instructions of the president, each member of the committee present at the hearing then expressed a willingness to with-

draw if Mr. DeWolfe took exceptions to their presence on the committee; but Mr. DeWolfe declared that he wanted the investigation to go over until this meeting of the Association, and that he would not disclose to the committee the member or members to whom he took exceptions, even though they were willing to withdraw from the committee. After much questioning he finally took the position that his exceptions went to at least a majority of the committee, and that he would refuse to proceed before any three members who might be left upon the committee by the voluntary withdrawal of the other two, again asserting his determination to have the entire matter presented to this meeting of the Association as a whole. He gave no other reason for his position than his exception to certain unnamed members of the committee.

Since Mr. DeWolfe has referred his charges to this Association, as well as to the legislature, for investigation, your committee believes that an expeditious disposal of the matter should be made by this body in the interest of the public welfare; to that end, and in deference to the instructions of the president of this Association, the committee will present in this report its conclusions upon the merits of Mr. DeWolfe's charges. It is able to make such report in spite of Mr. DeWolfe's refusal to present his evidence to the committee, as will appear from the following statement of proceedings had in this matter before the legislative investigating committee. Mr. DeWolfe appeared before that committee and requested that it sit jointly with the committee from this Association to hear his evidence in support of his charges. He suggested that the committee sit jointly as a matter of convenience so that he would not be obliged to go over the same ground in support of his charges before both committees, the deliberations of the committees to be separate, and their reports to be separately made to the bodies constituting them. The legislative committee, however, decided to proceed without waiting for the action of this Association, showing he had made before the legislative committee, in substantiatiate his charges before that committee alone. This Association was represented by its secretary at that hearing, and with the consent of the chairman of the legislative committee, this committee secured a transcript of the full stenographic notes of the proceedings of that committee. When Mr. DeWolfe appeared before this committee and refused to proceed with the hearing, his attention was called to the fact that the committee then had in its possession a transcript of the proceedings before the legislative committee, and he was asked whether he would have anything to add before this Association to the showing he had made before the legislative committee in substantiation of his charges. He refused to say whether he had or not, but

an examination of the transcript shows that Mr. DeWolfe expressly and repeatedly declared to the legislative committee that he had no direct evidence of corruption or misconduct upon which to base his charges, and that his entire case was made by the fact that the Supreme Court had, as he claimed, erroneously decided against his contention four cases which he had presented to that court. He attempted to support that remarkable position with the declaration that the court's decisions in the cases were so patently wrong upon both the law and the facts that nothing but a corrupt or wrongful motive could have inspired them. He said that all that was necessary to prove the truth of his charges was to examine the records and briefs in the four cases referred to, and to read the authorities cited in his briefs. Beyond that he said he had nothing to offer. Taking Mr. DeWolfe at his own word, therefore, your committee has in its possession in this transcript his entire case, and will make its report thereon.

It feels that it is able to make such a report in all fairness to Mr. DeWolfe in spite of his announced exceptions to the personnel of the committee. The members of the committee are conscious of no prejudice or adverse interest which could influence them in their decision upon Mr. DeWolfe's charges, and while the committee has felt some hesitation about proceeding in the face of this objection, it believes that its duty to the Association requires it to present this matter to the Association in definate shape so that a prompt disposition may be made of these charges at this meeting. If Mr. DeWolfe, in good faith, at this meeting, presents objections to members of the committee, the Association can then make such disposition of this report as it sees fit.

The members of this committee have carefully and painstakingly examined the entire transcript of the proceedings before the legislative committee. As appears from that transcript, Mr. DeWolfe was allowed to make his showing in his own way, to go through the records of the cases upon which he based his charges, and to read his briefs and authorities. Furthermore, at his instance, the legislative committee heard the testimony of two other attorneys, J. J. Anderson and A. H. Denman, of Tacoma, Washington, who claimed to have grievances against the Supreme Court somewhat similar to those of Mr. DeWolfe. Your committee has examined not only that transcript, but it has gone carefully and thoroughly into the records, and where necessary, the briefs and authorities in the four cases relied upon by Mr. DeWolfe and the two cases referred to by Messrs. Anderson and Denman. For the information of the Association it may be said that the four cases, complaint about which has been made by Mr. DeWolfe, are as follows:

State, *ex rel.* West Seattle vs. Superior Court of King County, reported in 36 Wash. at page 566.

State, *ex rel.* West Seattle vs. Superior Court of King County, subsequent to the foregoing case but never reported, being merely a denial of an application for a writ of prohibition.

State vs. Nicoll, reported in 40 Wash. at page 517.

Sherman vs. Mutual Life Insurance Company, reported in Advance Sheets for June, 1909, at page 373.

The case upon which Mr. Denman's complaint was based is that of Skinner vs. Tacoma Railway & Power Company, reported in 46 Washington, at page 122; and the case about which Mr. Anderson complained was that of Snowden vs. Anderson, reported in the Advance Sheets for January, 1909, at page 539.

The committee will not, in this report, state its conclusions about the decision of the Court in the case of Sherman vs. Mutual Life Insurance Company, referred to by Mr. DeWolfe, for the reason that the case in question is still pending before the Supreme Court upon a petition for rehearing, and any expression of opinion by the committee, either favorable or unfavorable to the decision of the court, would be improper at this time. Referring to the remaining cases mentioned above, and without unduly extending this report with a detailed statement of the points involved, your committee unhesitatingly reports that there is not the remotest foundation in the records of any of those cases for the charges made by Mr. DeWolfe. As to his charge that clear and unquestioned principles of law were violated by the court in holding contrary to his contention in those cases, it may be said that there was not a single proposition decided against him as to which there was not ample room for honest difference of opinion. His other charge, that the court by misstatement of the facts and misrepresentation of the record in its opinions made erroneous decisions appear in the reports to be correct, is just as groundless as the preceding one. The records in the cases in question do not disclose a single misstatement of any fact material to the decisions. In the opinions about which Mr. Anderson and Mr. Denman complain there are slight inaccuracies in the court's recital of explanatory facts. They are such inaccuracies as are often found in the opinions of all courts, but they in no way affect the decisions arrived at and are of no material consequence whatever. Mr. DeWolfe's own cases do not present even that ground of complaint. An examination of those cases can lead to but one conclusion, and that is that Mr. DeWolfe made his sweeping charges against the integrity of the judges, not only without any reasonable ground therefore, but withont the excuse which might be found in

an inadvertent mistake committed by the court prejudicial to his interests. It is clearly apparent that his wild charges are the result of too much brooding over imaginary wrongs that he believes himself to have suffered.

The facts upon which he has based his grave and monstrous charges and spread them broadcast throughout the state are not such as would raise in any reasonable mind even a shadow of suspicion as to the integrity or good faith of the judges whom he accuses. To make such accusations without any reasonable ground for them is a crime against the state, and indicates a mind either grossly malicious or so recklessly irresponsible as to be unworthy of a position at the bar of this state. Your committee finds no evidence of any deliberate malice upon the part of Mr. DeWolfe in preferring these charges, but it is unable to escape the conclusion that his conduct in making them without any shadow of justification therefor marks him as unfit longer to hold a license to practice law. We should therefore recommend that this Association appoint a committee of three of its members to secure the institution of disbarment proceedings against Mr. DeWolfe, and to co-operate with the proper public officials in their prosecution, if it were not for the fact that we are indebted to the courtesy of the legislative committee for the transcript of its proceedings upon which our investigation was based. Since that committee has not yet made public its conclusions in the matter, we believe it would not be proper for this Association to take definite action in the premises in advance of action by that committee. We therefore recommend the appointment of a committee of three members of this Association with full power to take such action in relation to the disbarment of Mr. DeWolfe as may seem proper and necessary when the legislative committee shall have made its report.

Your committee believes that if it has erred in these proceedings, it is in the direction of giving Mr. DeWolfe too much consideration. His charges are so preposterous that the committee would have been justified in dismissing them summarily upon his confession that he had no direct evidence to sustain them. Under the circumstances the propriety of the action of the committee in giving him any consideration whatever can be sustained only upon the theory that some investigation was necessary in order to determine whether there were any facts mitigating the seriousness of Mr. DeWolfe's offense against the bench and bar, and the people of this state.

The committee submits to the Association with this report all of Mr. DeWolfe's correspondence with the president of the Association, together with a full transcript of the proceedings before the legislative investigating committee, and of the hearing before this committee.

Frank Garrecht, the member of this committee from Walla Walla, has been unable to sit with the committee in the various hearings held in this matter, and therefore cannot join in this report.

JOHN C. HIGGINS, *Chairman.*
JOHN W. ROBERTS
GEORGE H. WALKER
W. B. STRATTON

MR. SHANK—I take great pleasure in moving the adoption of this report.

Seconded.

MR. PRESIDENT—You have heard the motion and it has been seconded. Is there anything to be said?

MR. TERHUNE—Mr. President, I would like to move an amendment that, instead of a special committee of three being appointed that it be left to the Grievance Committee. We have a Grievance Committee now, under the new by-laws, with full power to act.

Amendment seconded.

MR. POST—I will move a substitute for the amendment. I appreciate the diffidence of the Grievance Committee, because they got certain testimony through the courtesy of the Legislative Committee who had the temerity to undertake to investigate this matter, but I do not think this Association is bound by the same courtesy. I think it is due that this Association ought to take immediate action. I think, Mr. President, that every one here will agree with me that every lawyer in this state who has as much sense as God gave geese and who hasn't any kink in his own character, knows that each and every member of the Supreme Court is a man of the highest integrity and of spotless character, (applause) and that this Association ought to take immediate and summary action, and I therefore move you, as a substitute for the recommendation of the committee, that the President of this Association appoint a

committee of three who shall at once institute disbarment proceedings against Mr. DeWolfe and carry on the same to a final completion.

Seconded.

MR. PRESIDENT—You have heard the motion. Is there anything to be said upon it.

MR. VANCE—Mr. President, I have not "as much brains as God gave geese," but I desire to say this, however. Now, this is not a Baptist association for foot-washing purposes. We have met here as lawyers, and for us to take summary action in this way, with all due deference to the Supreme Court (for whom I have the highest respect) would be a most tyrannical, unjustifiable and condemnable act. Now, this man, for instance, Mr. DeWolfe, I think I know him; I do not know if I do or not. His livelihood and his name depends on his profession. Are we going to take it away summarily? Now, he apparently has presented certain charges to the Legislative Committee. I do not even know what the charges are, but I do know this, that he has got a right to present them, just as any of us as lawyers have a right to present charges against any man who treads the footstool of God, although he may not have "the brains that God gave geese." I think therefore that the substitute should be voted down.

MR. HUDSON—Well, I want to suggest this, that the by-laws provide the method that we are to operate under and there will be a new Grievance Committee, I suppose, that will not be composed of the same members, and that committee is required to give notice and examine parties and investigate this matter, and we must proceed under that by-law that we adopted yesterday. We cannot proceed under any other, in my judgment, and it goes as a matter of course to the Grievance Committee and it must be investigated as outlined by that by-law.

MR. POST—It has already been investigated.

MR. HUDSON—We are proceeding now to investigate him and we must give him notice.

MR. SHANK—No, we are not proceeding to investigate him. We are proceeding to institute proceedings.

MR. DEWOLFE—Mr. President, I am not a member of this Association, but I would ask, Mr. President, that I may be heard in my own defense for a few remarks.

MR. JONES—Mr. President, I move Mr. DeWolfe be heard.

Seconded and carried.

MR. DEWOLFE—Mr. President and gentlemen, I thank you. Mr. Vance, I am very much obliged for the remarks you have made. Mr. President, these charges of mine were made in good faith. The report of your Grievance Committee is absolutely false and unfair. I am down here, Mr. President, to substantiate to the letter and in the spirit all my charges. If I am granted a fair committee of this Association I will substantiate them. I have made these charges and have sent them to this Association through your President and you do not even know what these charges are. I have stated my reasons for not desiring to testify before your committee, in a communication addressed to this Association through your President. You do not know what my objections were. Your Grievance Committee had nothing before it upon which it could work, and it has brought a report in here from evidence and testimony that it has gleaned here and there, but, gentlemen of this Association, that report is absolutely unfair to me. I may not have "the sense that God gave geese," but I will say this, I have not had a fair hearing before your Association. What kind of an Association is this that will not grant a man a fair hearing? Why the action that is attempted here is preposterous in the extreme. If that letter of July 12th which I addressed to you is read before you gentlemen, you will understand the nature of my

charges and I can substantiate those charges to the letter. I never heard of such preposterous proceedings as these that are tried to be railroaded through your Association.

MR. STERN—In what respect have you not been accorded fair treatment by the committee.

MR. DEWOLFE—Let me tell you of just one case which I have cited. I can do it in a very brief space of time. I was advised. I went to Seattle, in response to a citation, Mr. Stern. I took my office records in these cases with the full intention of testifying before your Grievance Committee. After talking with some of my friends in Seattle, who knew a majority of this committee better than I did, I came to the conclusion that I would not get a fair report to this Association through that committee. Those were fears merely upon my part and I had nothing to stand upon except the advice of my friends and, Mr. Stern and gentlemen of this Association, I know now that my fears were well grounded, on account of that unfair report against me.

MR. GARRECHT—Didn't every member of that committee, individually, offer to withdraw, if you had any objections to them?

MR. DEWOLFE—They did. I stated to that committee—and the report and proceedings of that committee were taken in shorthand—I stated to that committee that before testifying before the Legislative Committee I was compelled to go into personalities, because there was a member upon that committee to whom I objected and I had stated my objection to the Speaker of the House and he had taken no action to have that member withdraw from that committee, so I had to go into personalities before that committee, which were very distasteful to me, and for that reason did not want to go into personalities in regard to the personnel of this committee. Mr.

President and gentlemen, I will state to you, right here and now, that if a committee of fifteen fair-minded men of this Association is appointed this morning that, before the evening session, I will lay before that committee the testimony that I have in substantiation of my charges and, if that committee returns a report to this Association that I have not substantiated my charges in every respect, then you may take action, but to take action on that report is absolutely and unqualifiedly unfair to me. An attorney, as I take it, is a judge before he is an advocate. You gentlemen have no facts before you to pass upon. How can you become advocates before you know what the facts—the real facts—in the case are?

MR. CHRISTIAN—I was going to ask you if you would not prefer a smaller number, say five or seven?

MR. DEWOLFE—I would prefer, Mr. Christian, a large committee, and, Mr. President, I would desire upon that committee that politicians and corporation attorneys be not appointed.

MR. GARRECHT—Mr. Chairman, as a member of that Grievance Committee who did not join in the report, I would like to be heard. I think that there is but one thing for this Association to do and that is to adopt the report of the committee as it has been handed in, neither adopt the amendment proposed by Mr. Post nor that proposed by Mr. DeWolfe. Mr. DeWolfe comes before the Association and he characterizes this committee as having been absolutely unfair to him and having made a report that is absolutely false. Now, this Association owes it to itself and owes it to its committee, if they acted fairly, to sustain this committee. Mr. DeWolfe himself has said that this committee, the members of it before whom he appeared, individually offered to withdraw in deference to what he said, that they, the members of it, were prejudiced. I ask him and the members of this Association, in all fairness, what more could he have asked that any member of that committee do?

He said that he did not like to offer or indulge in personalities, yet he comes before the entire Association, not saying to you gentlemen, what they have said in their report, that they did individually offer to withdraw and do him this fairness, but he comes and says that this committee made a report that was absolutely untrue, when they did all they could to offer him a fair trial if he would go into the merits of it. This matter is important to this Association and important to the bench of this state, it seems to me, and for that reason I think, too, that the motion of Mr. Post should not prevail and I do not altogether agree with General Vance. I think that the bench of this state, or any state ought to look to the Bar Association for protection from unfounded charges if they are suggested. The courtesy of their possition and the dignity of the bench require that when charges are made against them that they keep silent and if those charges are unfounded and untrue they have no redress, then I say it falls upon the Bar Association to see that the bench, as well as the bar, have a fair hearing and are treated with justice, and for that reason I say it behooves the Bar Association, if members of the bar, whether members of the Association or not, make unfounded charges against the bench, to protect the bench. But there is another thing we must not lose sight of, that there are charges made here against the bench not only by the members of the bar but by the public generally. They say there is suspicion about the bench and that there is a howl and there must be some foundation for this, and I say I join with what has been said in personally believing in the integrity and high honor of every member of the Supreme bench today, but we cannot lose sight of this other fact, and if we act precipitously, immediately, if we do not wait—and the committee says we should wait—and let this Legislative Committee go on and make its report first. If the charges are as they are reported here today and this

Legislative Committee finds nothing, I think then it will be up to this committee to take its final step as recommended by the committee. If we hurry and take summary action here, the public will say "That is the way with this Bar Association, made up of corporation lawyers and politicians, and whenever there is a charge made against any member of the bench, why, they stifle it. They go on and make some kind of a recommendation and then squelch the report of the committee." Let not that be said. Let us go along in the manner that has been wisely suggested by this committee. We will find that the results that will come from it will be the best, under all conditions, that can be, but I think, under the circumstances, gentlemen, that you owe it to your committee. It is evident, from what they have said, that they have done the best that they could under the circumstances. They offered to go into these charges as fully as they could; they offered to take whatever Mr. DeWolfe offered to them, to take it up and examine it, but he said that some friends of his told him that they were prejudiced, although he knew it not himself, and when they offered to withdraw and let the President of this Association turn it over to some one else, he did not even show the good faith that he should have shown. This committee did not seek this place; they were not appointed for this special purpose but they have been appointed and serving now for nearly a year and this duty fell to them in the ordinary course of business, and it was the duty of Mr. DeWolfe to either submit himself to that committee or say that he was prejudiced, or that the members were prejudiced, and not come in now and say that he did not want to indulge in personalities then. Now he comes in and says that these men, who honestly made this report as they believed it to be correct, that they were all wrong and made up false charges against him. I think the wisest thing that we can do is to adopt the committee's report just as it has been made.

MR. CHRISTIAN—Mr. President, I want to propose a motion as a substitute for all other motions and, if I get a second to it, I desire to make a few remarks on it. I move you that the by-laws adopted yesterday respecting the Grievance Committee and its investigations be suspended temporarily and that the President of this Association appoint, instantly, a committee of seven to take up the charges made by Mr. DeWolfe and to make a report at seven o'clock tonight.

Seconded.

MR. LANGHORNE—Mr. President, I would like an expression from the chair as to whether we are operating under the by-laws adopted yesterday and whether they are in force at the present time. If they are in force, Mr. President, I would like that portion of the by-laws read relating to the action that the Grievance Committee should take in such cases as this.

MR. PRESIDENT—Yes sir, in the opinion of the chair the by-laws adopted yesterday are in force at this time. The Secretary will read the section requested.

Read by Secretary.

MR. CHRISTIAN—Now, Mr. President, I understand the motion is before the house. I consider this a matter of a good deal of gravity. Mr. DeWolfe has declined to go before the committee that had this matter under investigation, but he comes here now openly and says that he does have matters that he wants to submit to a committee; that he wants it to investigate. Now, gentlemen, whether he has or not we do not know. As far as I am concerned I doubt that he has but, at the same time, I want to treat him fairly and I want to treat the Supreme Court fairly and the entire session fairly, but when a man comes in here and we have time to do it—and we can do it now—we can appoint a committee and, after investigating what Mr. DeWolfe has, we can act upon the report of that committee.

Now, the question of deferring action on the report that has been made by the present committee I think ought not to be taken as any criticism of that committee at all. I have every respect for the committee and every confidence in the committee and I do not want to criticise it in any way and the motion I am making, so far as I am concerned, hasn't any tendency in that direction. Nobody knows what this new committee may find and nobody knows what Mr. DeWolfe has got. He is here and says he has got something, and it looks like we owe it to the court and owe it to the profession entire not to brush it aside and pay no attention to the remark that Mr. DeWolfe makes. Let us give him a chance to show whether he has anything or not.

GENERAL BELL—Mr. Chairman, I understand from the remarks of Mr. DeWolfe that he has written a letter to the President of this Association on July 12th. If that letter is in existence, it seems to me this Association should have that at this time so we could have some further information as to his attitude on that point.

MR. PRESIDENT—The letter to which you refer I think was sent by the President of the Association to the Grievance Committee. All others the President has in his possession and, I think, with him; if not, then at his office.

MR. STERN—Mr. President, the purpose of my inquiry of Mr. DeWolfe was to ascertain whether or not there was any basis for the criticism that he passed upon the committee. Personally, I did not believe and I do not now believe, even after what he stated, that there is a single circumstance that can be suggested in the way of criticism upon the action of the committee. I have great confidence in each member of that committee and I think that its report ought to be adopted, just exactly as Mr. Garrecht has said. I am satisfied that the members of the Supreme Court, if they felt that they had a right to

be heard in this Association, would say that if Mr. DeWolfe has anything under the sun that he can offer to this Association showing any misconduct on the part of any member of that court, that the members of that court would be the very first to insist that the evidence be produced before the Association. Now, I speak of this because I am disqualified, absolutely, from even being considered as a remote possibility for such a committee as is now suggested be appointed, because, while I perhaps may plead guilty to being a politician, and a right poor one at that, I am a worse corporation lawyer, so I suppose I would be absolutely disqualified, and I only want to speak of it to keep an absolutely disinterested standard so far as the Association is concerned. We cannot afford, gentlemen, to leave this room withont giving Mr. DeWolfe a committee, if he wants one, to whom he may unbosom himself to the utmost extent. We have time enough and we cannot devote it to any better purpose than to clear the skirts of the court, if they can be cleared. If they cannot be, let these matters be brought before the Association so, at least, the public will understand that there is absolutely nothing we want concealed in our Association, and, with that in view, I suggest that we first adopt the suggestion made by Senator Christian and let that committee be appointed and let the other report lie upon the table until we hear if there is any further evidence that Mr. DeWolfe can give to the Association. I second the motion of Mr. Christian.

MR. SULLIVAN—Mr. President, I rather think we ought to adopt the motion made by Mr. Christian, simply for this reason, that accusations of this kind made against the Supreme Court are such that they reach a great many people who do not understand them and they do not understand the organization of the Bar Association and I feel that there is nothing in the charges. I do feel that that fact should go forth to the public in such a way that every man, woman and child in the state

of Washington can know that they are subject to no criticism from any source. Now, the report of the committee, it seems to me, is couched in very fair terms and they have undoubtedly discharged their duty as they see it, but Mr. DeWolfe is here. He still insists that he can prove his charges. Now, as a member of the bar who has practiced ever since its organization in the Supreme Court, I am frank to say that, personally, I do not feel that any single member of that court has any thought at any time, on that bench, of corruption and I think their decisions will compare favorably with those of any court in any one state of this Union, but, at the same time, while I feel that way and feel that there is nothing in the charges preferred by Mr. DeWolfe or his insinuations, still I feel that myself or any member of this organization will gladly consider any proposition that tends to show any wrong doing on the part of the Supreme Court, and I do not believe any member here would try to shield the court if any member of it has done wrong. Now, in order that there may not be any mistake about it, in order that there be no impression sent forth that Mr. DeWolfe has not been accorded a full, fair and complete hearing, I think it would be well to adopt the motion put by Mr. Christian and let Mr. DeWolfe put forth his matters today and let that committee report here tonight. I think it would be justice to the committee which has already acted and justice, also, to the Supreme Court.

MR. LANGHORNE—I would like to ask Mr. DeWolfe, if this committee is appointed, if he has all the evidence and papers at hand that he would want to present to the committee?

MR. DEWOLFE—Mr. Langhorne, I have the office copies and records in my own cases.

MR. LANGHORNE—As I understood, you said if the committee was appointed that you could convince it before the even-

ing session that your charges were well founded. What I want to know is whether there would be any delay?

MR. DEWOLFE—Oh, no.

MR. JONES—If Mr. Christian's committee, a committee of seven, is appointed, will you come back and say that you object to it because it was not larger?

MR. DEWOLFE—I will not say anything of the kind, Mr. Jones.

MR. SHANK—How long a time did it take you to present that evidence before the legislative committee?

MR. DEWOLFE—Four sessions; that was about two days.

MR. SHANK—And you propose to lay that matter before this committee before the evening session?

MR. DEWOLFE—I could not go into the evidence as fully as I did before the legislative committee, but I think I could present it as fully as I desire. Mr. President, if the Grievance Committee has not that letter to which you referred, I have a carbon copy at the office.

MR. HIGGINS—We have that letter here.

MR. PRESIDENT—That letter can be read, if the Association desires it.

MR. SHANK—Mr. President, I think there is probably, in the minds of some here, a misapprehension of the manner in which this whole proceeding would be handled if the report of the committee is adopted. The argument of some of the gentlemen in the other end of the room seems to be based upon the theory that Mr. DeWolfe has not had an opportunity and they are pleading for this opportunity, and that if we do not give him this opportunity, then the Association will be open to the charge of having railroaded through this whole matter. Now, what is the exact fact, as we have it here? Mr. DeWolfe says that it took two days, four sessions, to submit the

evidence before the legislative committee, and that did not include one case that he had that he desired to put before them. Now, he is proposing that a committee be appointed to investigate this whole matter and report back to this Association tonight, which means, of course, that if that committee is not ready to report it will be expected that this Association will continue that committee for the next year and no action will be taken for one year. It must be patent that that is the exact situation. Now, it cannot be said fairly that Mr. DeWolfe has not had an opportunity to be heard. This committee, that is, the committee of the Association, has in its possession and has examined, as they have said in their report and over their signatures, every bit of the testimony that went before the legislative committee which Mr. DeWolfe placed before that committee in the four sessions during which it sat. They have not only gone into that, but they have gone into the other features of this whole matter. They have made their findings and those findings are fair. Now, Mr. DeWolfe is not deprived of any rights. He will have the opportunity to appear before the Superior Court before which this charge will be carried and there disprove it. This is not the court of last resort. I say that to maintain the honor and dignity of the bar of this state we ought to act, and I say now is the time to act, and we are not railroading anything. I chanced to be in the city of Portland for two weeks in the trial of a case during this preceding legislature and every morning the *Morning Oregonian* dished us up big headlines with flaring top with reference to this investigation, giving all those things that would seem to indicate that there was something in these charges against the Supreme Court. That is the situation that exists throughout this country. I tell you, Mr. President and gentlemen of this Association, that whenever such statements are made as have been made and whenever a man has had a hearing before the legislature with the end in view of impeaching the Supreme Court and whenever

he has had a hearing before a committee of such an Association as this or given an opportunity to be heard and he refuses to be heard, it lies little in his mouth to complain that he has not had a fair opportunity to be heard. Not only that, but keep in mind that he still has an opportunity to be heard when it comes before the Superior Court which will try this case. It is not going to be biased. Now, we know this committee. Here is John Higgins; there is George Walker; there is John Roberts, and there is W. B. Stratton, four men in whom we all have confidence. It must be patent to you, gentlemen, that he has a grouch against everybody because he has a grouch against these gentlemen, too. He casts slurs upon the Supreme Court and then he comes right into this Association and casts slurs upon this committee of this Association which has made this honorable, open and fair report, and I say if this Association does not now and here stand by that committee that they ought to quit appointing committees and take everything from the floor of the Association. I submit, Mr. President and gentlemen, that these other motions ought to be voted down and that the committee report, as it was made, ought to be sustained and this convention proceed with its business.

MR. PEDIGO—It seems to me there is another matter involved here besides the disbarment of Mr. DeWolfe. If that were all, I should be satisfied with the prompt passage of this resolution as offered by the committee on that report, but it seems to me there is another question here, and that is this: Charges have been made in this meeting against the highest court in this land and whether those charges can be sustained or not is the purpose of the appointment of this committee. We owe it to ourselves and to this court to take this testimony, whatever it may be. The fact that this committee could not get this testimony does not settle the matter at all. I noticed that when Mr. Post remarked that we all believed that the Supreme Court

was true, he was cheered, and I joined in that applause. I do not believe DeWolfe has any testimony, but that is not the point. He says he has. Let us give him a chance and if he doesn't produce, fire him from the Association and disbar him as soon as possible.

MR. BRYAN—I believe, gentlemen, that things ought to be done decently. I believe that this Association, and all associations of longer years' experience, have established certain machinery and certain methods for the trial of disbarment proceedings and things of that kind, and I believe this Bar Association, having established a definite plan and fairly good means of determining all such grievances and offenses, ought to follow and carry out the method that they have established. Now, the committee that will be appointed here in a few minutes, if that committee were appointed, would be appointed by the same power, and with the same authority, that you would appoint the Grievance Committee that will be appointed shortly. The same officer would appoint it and the same objection could be made to the finding of the committee, or, at least, it would be liable to the same objections. I do not believe that, by adopting the report of the committee and refusing to appoint this committee, we are taking from Mr. DeWolfe any right in the world that he has to a fair, straight-forward hearing of this case, and we cannot determine these matters this way. If we have a speedy, rushed hearing between this and night, the determination of the matter as the findings will be given in here by the men composing the committee, will not be satisfactory to anybody, and I believe that the committee that is to be appointed ought to handle the matter and handle it carefully and if they think there ought not to be any proceeding they don't have to institute it, or if they think there ought to be proceedings let them institute them or else leave the whole matter to be taken care of by the Grievance Committee. I believe it would be fair and reasonable, and it would be follow-

ing the rule that all things must be done decently and in order.

MR. JOAB—Mr. President, I hope that before this Association proceeds to a full determination of this matter, that they will pause and think and not be hasty about a matter of this gravity. We are here for the purpose of carrying out the program, and we cannot do that and assume jurisdiction of a matter that, in my opinion, does not belong here. We, in a measure, concur most heartily in the sentiment of General Vance when he expressed the sentiment that this action, in a sense, is a reflection upon the Supreme Court itself and an intimation that the Supreme Court is not able to protect itself. The committee has said, in its report, that one case is now pending on a rehearing before the Supreme Court. If it is, the Supreme Court has the power and authority to take summary proceedings against this man himself. It has the power to protect itself, as it has done heretofore on several occasions. I want to say, gentlemen of this Association, that I barely know this plaintiff, Mr. DeWolfe. I think I have never spoken to him more than three or four times in my life, and I know nothing about the merits of his charges because I have not gone into them, and I believe that is the case with almost every one here. A very unfortunate matter happened within the last six months. I want to say to you, gentlemen, that it made my cheeks blush with the mantle of shame when I saw, not DeWolfe's statement, not the statement of any of these other people but I refer to editorials in some of the most reputable journals in the United States, journals of large circulation. If you will turn to *Colliers* of the 10th inst., for instance, you will find, in the editorial columns, a most terrible arraignment of our court which I think nothing short of infamous, and I think the court, or its friends, should take some method of protecting it against such assaults as that. A paper which has, as I am reliably informed, a million circulation throughout the world, has very much more

power than a poor, weak brother such as he who has appeared here today and others who have been spoken of. In justice to all parties concerned, in justice to the members of this Association, in justice to the bar, in justice to the by-law under which we can only act, I move you, as a substitute for all that is now before the house, that the whole proceedings be laid upon the table and that we go forward with our program and let this matter be taken up as it should be taken up, by the proper authorities, assuming, as I do assume, that we are without jurisdiction to act properly in the premises.

MR. HIGGINS—Mr. President, before this question is put and the motion voted upon, I want to speak upon behalf of the committee. I think I can disclaim, for the committee, any desire to have this Association, by vote taken here now, attempt to protect this committee in the report it has made. I do not believe, knowing all the facts in the matter, and I think that I can say that I do, that the report of the Grievance Committee needs any protection from a vote of this Association. On behalf of the committee and on behalf of their own personal views about this situation, I think I can say that we would welcome the appointment of another committee of this Association which should thoroughly investigate this entire matter and make a report to this Association. There can be no question about what the report of that committee will be. It would find that the report of the Grievance Committee as read to you here today was justified in every particular. That, from a personal standpoint, would be a welcome thing to the members of this committee, because members of this Association and the people who will hear and read of these proceedings do not know the facts upon which we have made our report. But I think there are other considerations which should move this Association in determining what it is going to do about the report of the Grievance Committee. We are a body of lawyers here and we

have heard Mr. DeWolfe's demurrer—that is about what it amounts to. I cannot see, in his statement, any justification for the appointment of another committee of this Association. Mr. DeWolfe has said on the floor here that he had certain objections to the members of this committee which he did not desire to state to the committee because he did not want to enter into personalities. He did not hesitate to enter into personalities here today but he did not state objections to the members of the committee. We have here a transcript of the proceedings before this Legislative Committee. Mr. DeWolfe said he could present his evidence to this special committee today. Here is a transcript, which he says is not complete because it does not go fully into one of the actions that he wanted to call attention to, and that contains two hundred and eighteen pages of typewritten matter. Now, if any committee of this Association feels capable of wading through those two hundred and eighteen pages today and making a report tonight, then it is a brave committee, and I want to call to your attention a fact which is not apparent from the length of this transcript, and that is that this transcript does not contain one-quarter of the matter that Mr. DeWolfe presented to the Legislative Committee, because this merely refers to a long list of authorities that he read to that committee. This contains what he said except as he read it from the books and the briefs.

MR. DEWOLFE—May I ask a question?

MR. HIGGINS—Yes, sir.

MR. DEWOLFE—How many of my briefs are copied in full in that report?

MR. HIGGINS—Two of them, and in those briefs the authorities are merely referred to by volume and page, and Mr. DeWolfe read many of those authorities before the Legislative Committee. Now, I assume if Mr. DeWolfe presents this same matter to this committee that he presented to the Legislative

Committee, he will want to read his authorities to this committee and certainly he cannot do it tonight.

MR. POST—Have you examined the records in all those cases?

MR. HIGGINS—We have examined the record and statement of facts in every one of these cases where there was a statement of facts made up. Mr. DeWolfe asserted repeatedly to the Legislative Committee that he had no showing to make in substantiation of his charges except the showing on the face of the record in those four cases and the showing that could be made by his reading of his authorities on controverted points of law. He does not say here and he did not say to the Grievance Committee that he had anything to add to that showing. He evaded that question before the Grievance Committee, as he has evaded it here. He has not told you what he desires to present. He has not said that he has anything to add to the showing that he made before the Legislative Investigating Committee and to the showing that was open to the Grievance Committee and investigated by them before it made its report.

MR. STERN—I understood him he did have and that is what got me interested.

MR. HIGGINS—Have you any other showing, Mr. DeWolfe, than you made before the Legislative Committee?

MR. DEWOLFE—I have, Mr. Higgins.

MR. REID—Of what nature?

MR. DEWOLFE—I think that matter is a matter that could not possibly be brought up before the committee today. On Monday last, Mr. Terrance O'Brien, administrator of the estate of John Sullivan, deceased, came over to Tacoma and consulted me in regard to my charges. Mr. O'Brien personally took a trip to Ireland to investigate the facts in regard to the heirship of claimants to whom was awarded the Sullivan estate. Mr. O'Brien states that he can show, to the satisfaction of any in-

vestigating committee, that there was stolen, not from the people of this state, not from the city of Seattle, but from the school children of our state a cool one million dollars.

MR. LANGHORNE—What has that got to do with your case?

MR. DEWOLFE—My charges are broad enough to cover any cases of that kind, so the Legislative Committee held. That matter, Mr. President, will be laid before the Legislative Investtigating Committee and Mr. O'Brien will be there to testify about that matter. There are a few cases to be investigated, Mr. President, besides my own personal cases, but the idea I meant to convey to this Association at this time was that a fair committee could, by this evening, in investigating my own cases, clearly see that my charges were well-founded and, if they are, then a committee can further investigate after the adjournment of this Association.

MR. HIGGINS—I would like to make a further statement now. I think that the Association can see exactly what Mr. DeWolfe is intending and what he is leading to. Mr. DeWolfe expects to open up before the committee, I assume from experience with his proceedings in the past, a number of questions which cannot be decided this afternoon or today nor at this session of the Association. This is merely another means of spreading a lot of unfounded scandal before the people of this state for the purpose of besmirching the Supreme Court without ever arriving at any decision or conclusion whatever. Mr. DeWolfe has a facility of denial and assertion about what he can do that is surprising. It was astounding to the members of the committee to read his repeated assertions to the Legislative Committee that the mere examination of the record in those cases would show that the Supreme Court had wilfully violated its oath of office; that a mere reading of one of the opinions would show that the Supreme Court was corrupt; that the mere consideration of a certain line of authorities of his would show that the

Supreme Court could not decide against the holding of those authorities and decide against them in good faith. Now, if this Association wants to treat another committee to persistent declarations of that kind, to the hint that some attorney of some city has said to Mr. DeWolfe that, in some cases that he had in the Supreme Court, there were certain things which would show that the Supreme Court was corrupt, then the special committee, if appointed this afternoon, will be in session for three months and won't arrive at anything. Now, Mr. DeWolfe will have an opportunity to substantiate every charge he makes, if he can substantiate them, before the courts of this state when he is prosecuted for disbarment. This Association doesn't shut off any investigation. This Association, by adopting the report of the Grievance Committee, stops a scandal-monger and prevents his having a further opportunity to air his unfounded assertions before a respectable association. If I thought that, by adopting the report of this Grievance Committee, this Association was going on record in favor of smothering any investigation of the Supreme Court, this report would never have been brought in with my consent. It is because Mr. DeWolfe will have an opportunity to present his charges in a tribunal that will not listen to the sort of evasion and sort of dodging the question that Mr. DeWolfe has exhibited here today, that I favor the report. Now, I do not know what the disposition of the Association may be towards allowing Mr. DeWolfe a further opportunity to do this sort of quibbling, but I do not believe that, in justice to itself and to the bench and bar of his state, the Association can longer trifle with the sort of assertions that Mr. DeWolfe has made here today.

MR. DEWOLFE—Mr. President, can my letter of July 12th be read to the Association?

(Cries of "No, no; it was published in the press. Everybody has read it.")

MR. MCCAFFERTY—Mr. President, I do not believe in post mortems—except in poker games, but I am a great believer in precedent and I am in favor of the majority. Last night it was my pleasure, as well as I felt it was my duty, to call your attention to the fact that when a report was made that the report of the committee would usually be sustained on this question of grievances and that you didn't have the time and wouldn't have the time to take those matters up and that they would probably be settled right there and then, and when I plead for the opportunity of appeal to the Association, which was in the substitute proposed last night, the argument was made by the distinguished gentleman on my right, Mr. Jones, that every opportunity was to be given. Now the case has come up exactly as it was anticipated it might come up, this very day. This committee has made a report. This committee is a fair committee. There is not any man that can stand on this floor and say that each and every one of those men are not honest, straight, fair, square-dealing men. It is true they are corporation attorneys. That is to the honor of these young men that they are corporation attorneys, that Stratton, that Higgins, that this young man Walker is a corporation attorney. I did not mean it in the sense that it was taken, because beautiful white hair is not proof that he is an old man. You know that Walker is a young man, as well as handsome. Now, we said yesterday that that particular principle of the majority we would stand by. We established a precedent yesterday. These men have given this man a fair hearing and he has given us to understand today just exactly what he is about, in the last remark that he made when he brought in the Sullivan case. God help us and deliver us from the Sullivan case! I believe if there ever was a committee report which, in justice to the committee and in justice to the Association, ought to be sustained this report ought

to be, and this committee's report ought to be adopted forthwith.

MR. PRESIDENT—The question is called for, gentlemen. The motion is that a committee of seven, to be appointed by the chair, be forthwith appointed for the purpose of making an investigation upon the charges in question and that that committee report to this Association at its meeting in this place this evening. All in favor of the motion say aye; contrary, no. The noes appear to have it; the noes have it.

MR. PRESIDENT—The motion now occurs on the amendment of Mr. Post, that the committee to be appointed institute proceedings at once. All in favor of the amendment say aye; opposed, no. It is carried.

MR. TERHUNE—Mr. President, I now move the adoption of the report of this committee as amended.

Seconded.

MR. PRESIDENT—The question is upon the adoption of the report. All in favor will say aye; contrary, no. The report is unanimously adopted.

MR. BRYAN—I desire to state, Mr. President, that I had no objection to the adoption of the report; in fact, I voted for the adoption of the report. The report is satisfactory so far as it could be made by the committee. I have no criticism of its action. Of course, there were no charges presented and the committee could do nothing about it, but I want to make this statement to the gentlemen of the Bar Association, because I do not want the members of this Bar Association to believe that I present matters to this committee which involve merely a little personal unfriendliness between myself and another senator or a political controversy between myself and anybody, but for three or four years back I have frequently heard certain statements made concerning Judge Yakey, a judge before whom I practice——

MR. MCCAFFERTY—Mr. President, I rise to a point of order. I do not think it is fair that any statement should be made until the matter has been referred to the committee and the committee has made its report. I do not think it is fair to make any statement in regard to Judge Yakey inasmuch as Judge Yakey is not here.

MR. PRESIDENT—I am disposed to sustain the point raised.

MR. BRYAN—When those statements were made I desired to give the gentleman referred to an opportunity to present those charges, of which you have heard before. According to the report here of the committee those charges were detailed before someone and some gentleman said that those matters constituted grounds for disbarment. Now, then, gentlemen, the grounds, very likely, that were referred to in that conversation were matters that came up in a political campaign back there that I did not remember, but since the campaign I have investigated somewhat and I am going to present those matters in the form of written charges, signed by myself, against Judge Yakey. I filed them last night with the secretary of this Association. I won't attempt delay by asking the Association to read them, but I have filed them and I would ask and move that they be referred to the Grievance Committee.

Motion seconded and carried.

MR. PRESIDENT—Gentlemen, I find it somewhat unusual, but necessary it appears to me, because of peculiar conditions, that the President of the Association should himself make a report to the Association. I am just handing to the Secretary that report, which I will ask him to read unless there are objections.

The report of the President on Special Committee is here read by the Secretary, as follows:

REPORT OF PRESIDENT ON SPECIAL COMMITTEE.

Gentlemen:

Some months ago, and since the last meeting of this Association,

at the request of the Supreme Court of this state, I, as president of this Association, appointed a special committee for the purpose of investigating certain charges made against Milo A. Root, then a member of the Supreme bench of this state. The Association not being in session, upon the suggestion of the Supreme Court, I, as president, took the liberty of appointing such committee.

The committee appointed was John H. Powell of Seattle, chairman; Harold Preston of Seattle, George E. Wright of Seattle, R. G. Hudson of Tacoma, and T. L. Stiles of Tacoma. This committee spent several weeks in making its investigation, holding meetings and taking testimony at various places in the state of Washington. In taking this testimony, the committee was required to obtain the services of a stenographer, and did obtain the services of Mr. C. B. Eaton of Seattle. The bill of the stenographer for testimony taken was the sum of $429.00. The individual members of the committee were at their own expense in traveling over the state in taking testimony and performing the duties which were assigned to them. Later that committee reported to me, as the president of this Association, its conclusions and findings, all of which were at the time published, and I beg now to submit to this Association the findings and conclusions at that time reported to me. I also submit to the Association the testimony which was taken by the committee in the manner I have mentioned.

None of the bills of expense of any of the members of that committee have been paid; neither has the stenographer been paid. I recommend that the executive committee of this Association be authorized out of any moneys of the Association to pay and discharge the bill of the stenographer and the individual expenses of the committee.

The members of this committee spent several weeks in the performance of their duties, all to their very great business sacrifice, and I cannot conclude this report without personally commending the various members of that committee for the very earnest, thorough, conscientious and painstaking manner in which they performed the duties devolving upon them. Respectfully submitted,

J. B. BRIDGES,
President State Bar Association.

MR. SECRETARY—I move the adoption of the report, Mr. President.

Seconded and carried.

MR. WALKER—Mr. President, do I understand that the re-

port to you of this committee is to be read to the Association or is it assumed that all members are familiar with it through the print in the public press?

MR. PRESIDENT—The report is here and the body can do as it likes about having it read. I anticipate everybody here is perfectly familiar with it because it was published in all the press, and the report itself is quite lengthy. However, it is here to be read if it is thought advisable.

MR. WALKER—Mr. President, and gentlemen of the Association, assuming that to be true and that it is unnecessary to now read to this Association the report, with which we are all familiar and which had the widest publication throughout the state, I desire at this time to introduce the following resolution and, if I can receive a second, move its adoption and be heard very briefly upon it:

Whereas, The special committee, appointed by the President to investigate the charges against Milo A. Root, has reported to this Association; and,

Whereas, according to the by-laws of this Association, proceedings for the disbarment of said Milo A. Root and his expulsion from this Association can be taken only by reference to the Grievance Committee;

Therefore, be it resolved, That the report of the special committee be referred to the Grievance Committee, and, that it is the sense of the Association that the Grievance Committee cause disbarment proceedings to be instituted against Milo A. Root, if in the judgment of said committee such proceedings can be successfully maintained, and that because of the pendency of the criminal proceedings against M. J. Gordon, no action be taken against him at this time.

I move the adoption of this resolution:

Seconded.

MR. WALKER—Mr. President, and gentlemen of the Association, it is a most unwelcome task and a disagreeable duty that devolves upon me at this time when I present this resolution and move its adoption. I desire, in a few remarks that I

shall make, to speak deliberately and absolutely without passion or feeling, for I have neither. I have known Milo A. Root for many years. I was one of those who, at his instance and request, recommended him for a position to the Supreme Bench when he was first appointed by the Governor. We have always been upon the best of terms and the best of friends. But, in the situation that presents itself to us today as members of this Bar Association, owing a duty to the Association, to ourselves as individual members thereof and to the people of this sovereign state of Washington, I believe that any personal considerations should be waived and laid aside. The ermine of the Supreme Court has not only been trailed in the dust, but it has, in my judgment, been dragged through the mud and the mire. The highest tribunal in our state, a sovereign state in this American Union, has, during the last few months, been subjected, and justly so, in my opinion, to the ridicule and the contempt of the whole people of the United States. It is true that, since the report of your honorable committee, the man in question has left the bench —been forced therefrom by public sentiment initiated through the report of your committee, and it may be the judgment of many of the members of this Association that ample and complete punishment has been meted out to him, and I do not doubt but that his friends in this Association will feel that way and will urge those considerations and other considerations against the adoption of this resolution. In my judgment, Mr. President, and gentlemen of the Association, we have now, in the consideration of this resolution, as grave a duty confronting us as ever confronted this Association from the days of its organization down to the present moment. I believe that we owe it, not only to the Association as a whole, but to ourselves as practitioners of an honorable profession and to the people at large not only throughout this state but throughout the country, for the eyes of the country are upon us, hav-

ing been directed toward us by publications that have received the widest possible circulation during the recent months and even on a recent date. The question is: Has this Association the self-respect, the nerve and the intelligence to purge itself of the membership of this man and to proceed against him in disbarment, or whether it will supinely, as it has beforetimes done, smooth the thing over, let it go by the boards, and let the Association and the members thereof be held up to the continual and continuous contempt of all right-minded people? I do not believe that the Association will do that. I believe that the Association will waive all considerations of a personal nature touching Milo A. Root or those who are dependent upon him and will see its duty clearly as it considers the larger and broader question that affects us all. I do not care to be heard further, Mr. President. I offer this resolution. I move its adoption. I believe we owe it to ourselves as individuals, to the Association and to the people at large throughout the state. If we pass over such an aggravated case as this, how, in the days that are to come, when some lesser or minor offender comes up and his case is for consideration before the Association, how can we deal fairly with him and with ourselves when it shall be said that, in a larger and graver case, we failed in our duty and were derelict in discharging it? Mr. President, and gentlemen of the Association, I move the adoption of this resolution and I trust it may pass.

GENERAL BELL—May I ask this question?

MR. WALKER—Certainly.

GENERAL BELL—Why was this not included in the committee report?

MR. WALKER—There was no matter, as I understood it, that was properly before the Grievance Committee. Nobody had made a complaint. It is the province of the Grievance Committee, as I understand it, simply to pass upon matters that are

brought to its attention in a direct and specific way under the by-laws. I am not introducing this resolution as a member of the Grievance Committee—not in any sense. I am introducing it simply as an individual in the discharge of what I believe to be a solemn obligation.

At the request of members, the resolution is re-read by the Secretary.

MR. PRESIDENT—Gentlemen, is there anything further to be said upon this resolution?

MR. HOLBROOK—Mr. President, there is one clause of that resolution which, it seems to me, conflicts with the new by-law we passed last night. The resolution says it shall be the sense of the Association that the Grievance Committee be instructed to commence disbarment proceedings, or something of that kind. Under that new by-law, as I understand it, the Grievance Committee is to report back to the Executive Committee and then the Executive Committee is to instruct the Grievance Committee to commence disbarment proceedings or anything else the Executive Committee of this Association determines upon.

MR. PRESIDENT—I suppose this is simply the expression of the sentiment of this Association and it would take the regular course.

GENERAL BELL—Mr. Chairman, should this Association make any expression at this time? It seems to me that we should simply refer this matter to the Grievance Committee and let the Executive Committee act upon the report of the committee, as the by-laws prescribe.

MR. SHANK—It seems to me that the wording of this is not just happy. I move to amend the resolution as follows: "That the Grievance Committee cause disbarment proceedings to be instituted against Milo A. Root and M. J. Gordon, at the conclusion of the criminal proceedings now pending against the

latter." I simply have this to say, Mr. Chairman, that if this Association is to take any action at all upon either of these two men they should be so identified one with the other that they will ultimately either stand or fall together. Now, it is not a proper thing, in my judgment, to have a resolution of this sort adopted at this time so that one of these men may have a proceeding against him and then, at some subsequent meeting, if perchance the criminal proceedings should not be sustained, have the whole question with reference to Judge Gordon whitewashed. Now, I am perfectly willing that the matter should be placed in such position, I care not particularly how that may be, so that those two men may stand or fall together, because if one is guilty the other is guilty, and surely if Judge Root is guilty Judge Gordon is guilty. I make this amendment simply because I think it is the only fair way it may be stated, if that resolution is to be adopted. I am not particularly in favor of the resolution at all in that particular form, but if there is to be a resolution of that character they should be so identified one with the other that they should stand or fall together.

MR. DOVELL—Mr. Chairman, I am convinced that Mr. Walker has not offered his resolution without the most deliberate consideration. Now, there should be nothing so abhorrent to a lawyer as to permit anything to be done which would prejudice the rights of a man charged with a crime. As I understand it, Judge Gordon stands charged with a crime in the Superior Court of Spokane county. It would be most unseemly, it seems to me, for this Association to take any action which, of course, would be published and would be read by those who may sit as the tribunal to try Judge Gordon in the criminal case, and, for that reason, I think it most fit that this Association refrain, not only from any action, but refrain from any expression while Judge Gordon's case is pending. Now, as to the

other matter, I am heartily in accord with what has been said by Mr. Walker, and I have not reached that conclusion without giving the matter most serious consideration. I hope, Mr. Chairman, that I am not lacking in the bowels of compassion and, if I could think of any way in which this Association, in which the bar of the state of Washington and the bench of the state of Washington—the whole sovereign state of Washington—could be set right in the eyes of the people at large by any other course, I would gladly adopt that, but I can think of none. Mr. Chairman, less than a month ago I went into one of the departments of the Superior Court of King county and there I saw, sitting upon the bench as special judge and, if you please, in his silk and gold and dispensing "even-handed justice," Milo A. Root. Now, I do not want to be Pharasical. I do not pretend to any virtue except that of common decency, but I want to say to you I departed from that courtroom in shame. The conduct of that man, Mr. Chairman, has made the name of Washington to ring in the ears of all the people of America as the synonym of disrepute. I can think of no way to remove that stain except by adopting the course suggested by Mr. Walker. We owe a duty to our profession, we owe a duty to our state, we owe a duty to ourselves, and I can think of no other way in which it may be discharged than by following the suggestion contained in the resolution of Mr. Walker.

MR. SHANK—Mr. President, upon re-reading the resolution, feeling as strongly upon this matter as any one else in this Association and believing, also, that the amendment which I offered might not be just to one charged with a crime, with the consent of my second, I will withdraw my amendment and vote for the adoption of the resolution.

MR. PRESIDENT—Does the second give consent? I am not sure, come to think of it, that any second was made. I do not recall it. We will consider the amendment withdrawn.

GENERAL BELL—Mr. Chairman, before this question is put, and it seems to be very urgent and insistent that the question be put at this time, but it seems to me that something further should be said on this matter. The gentleman who just closed his remarks stated that he had seen Judge Root on the bench "dispensing even-handed justice" in King county, and that he went away with the blush of shame on his face. Mr. Root was there at that time, and must have been there, by consent of counsel on each side of that case and they believed that he had the honesty and integrity to try that case or they would not have consented to his sitting there as special judge. Now, the last gentleman also said that Judge Gordon should not be tried at this time. I agree with him. He also says the reason is that what might be said in the trial might affect his standing in the criminal case that is now pending in Spokane. I agree also with that statement, but I ask him and I ask the members of this Association how they can try Judge Root and not have Judge Gordon's name associated with every phase of that case? There is not one single phase of the case in which the name of Judge Gordon must not be used and must not appear. Now, how can we try one and not try the other? Now, it seems to me, as has been said several times, that this Association should proceed decently and in order. It has been said by Judge Shank that this case is such that one should stand or fall with the other. If one is not going to be tried the other should not be tried. Now, it seems to me, in all fairness to Judge Root and all fairness to Judge Gordon, that this matter should be continued at this time until Judge Gordon's case has been tried in the criminal court, then try the case of Judge Root and Judge Gordon at that time. Now, we will lose nothing by it. A little delay will not hurt. To that delay no friend of Judge Gordon can object because, as I say, then there can be nothing said that will interfere with Judge Gordon's criminal case and whatever is said will not affect Judge

Gordon or Judge Root in a criminal matter, and after the trial of Judge Gordon has been had the committee may decide that it will not want to try Judge Gordon or Judge Root either, but, be that as it may, the fact that he has been tried we will have before us as well as all the facts and then this Association, one year from now, can act on both matters at the same time and both men can stand or fall on the evidence introduced at the trial and it seems to me, then, that we ought to act decently and in order and should postpone this matter until Judge Gordon's trial is had.

MR. PRESIDENT—The question is called for. All those in favor of the resolution will say aye; contrary, no. The ayes have it, and the resolution is passed.

Upon motion, adjournment was here taken until 1:30 o'clock, p. m.

AFTERNOON SESSION

1:30 o'clock p. m.

MR. PRESIDENT—Gentlemen, if you will come to order, we will proceed with the business of the day.

MR. DOVELL—Mr. Chairman, I would like to present the report of the Committee on Nominations, inasmuch as some of the committee are obliged to return home upon the afternoon train. May I read the report?

MR. PRESIDENT—You may, if you please.

The report of the committee is read by Mr. Dovell, as follows:

REPORT OF COMMITTEE ON NOMINATIONS.

We, your Committee on Nominations, do hereby report the following nominations:

For President, Hon. C. C. Gose, Walla Walla.
For Secretary, C. Will Shaffer, Olympia.
For Treasurer, Arthur Remington, Olympia.
Delegates to American Bar Association:
Charles E. Shepard, Seattle.
W. V. Tanner, Olympia.
Walter Christian, Tacoma.

And your committee does respectfully recommend that the next meeting of the Association be held at the city of Seattle.

L. F. CHESTER,
L. O. MEIGS,
C. W. HODGDON,
U. E. HARMON,
W. T. DOVELL,
Committee.

MR. PRESIDENT—Gentlemen, you have heard the report of the committee. What will you do with it?

MR. TEATS—I move that the report be amended by striking out the word "Seattle" and inserting the word "Bellingham."

Seconded.

MR. KELLOGG—In behalf of the Association and Bar of Bellingham, I desire to extend this Association an invitation extended by our association at a recent meeting, to come to our city for your next convention. Bellingham has never had a meeting of this distinguished Association, we have long wanted it and we trust you will come to us next year. We promise to do our best, gentlemen, to give you a good time.

MR. SMITH—I move we accept this long felt want.

The amendment is put to the house and carried.

GENERAL BELL—I move that we adopt the report of the committee as now amended.

Seconded and carried.

MR. GARRECHT—I move that the Secretary cast the vote of this Association for the nominees named by this committee.

Seconded, and carried unanimously.

MR. PRESIDENT—As the committee of three recommended by the Grievance Committee to institute disbarment proceedings against Mr. DeWolf, I shall ask the following named gentlemen to serve: R. G. Hudson, of Tacoma, Maurice Langhorne, of Tacoma, and P. M. Troy, of Olympia.

MR. STERN—Before leaving the subject of the Grievance Committee and matters that came before the Association this morning, and while we have had these matters under consideration I believe we ought to make a good, clean sweep of everything that can possibly affect the standing and integrity of our court, if there is anything that does so affect it, and, if I can get a second to this resolution, I desire to offer it: (Reads resolution).

Whereas, It has been frequently reported in the public press and otherwise, that J. W. Robinson of Olympia has charged members of the Supreme Court with unbecoming conduct and reflecting upon the integrity of said court; and ,

Whereas, The members of said court are also members of this Association and as such subject to investigation as to their judicial and professional conduct; and,

Whereas, It is desirable that such charges, if any exist, be either proved or forever silenced; be it

Resolved, That it is the sense of this Association that said J. W. Robinson should file with the Grievance Committee of this Association any charges which he may desire to lodge against any of the members of said court, or cause the same to be filed within 60 days from this date.

I move the adoption of this resolution.

Seconded.

MR. SULLIVAN—I move that the resolution be laid on the table.

Seconded, put to the house and lost.

The motion to adopt the resolution was then put to the house and carried.

MR. PRESIDENT—We have with us today a very distinguished lawyer, not only of the state of Oregon but, I think I am

justified in saying, throughout all the states, who has very kindly consented to be here and address us this afternoon. His subject will be: "Due Process of Law in Connection with Railroad Rate Legislation," and the speaker upon that subject will be Mr. W. W. Cotton, of Portland, Oregon.

(For Mr. Cotton's address see appendix).

MR. PRESIDENT—Mr. Cotton, I desire to express to you the gratitude of the Association for your excellent address.

MR. PRESIDENT—We will now have the report of the Committee on Publications.

Mr. Arthur Remington, chairman, reads the report.

REPORT OF COMMITTEE ON PUBLICATION.

July 30, 1909.

To the Washington State Bar Association:

Gentlemen:—Uner the old rules the publication of the annual reports has been in the hands of the Secretary, who has been handicapped both by lack of funds and time, and by certain unnecessary practices.

The new by-laws, just adopted, provide that it shall be the duty of the Committee on Publications "to prepare and distribute the papers and publications as directed by the Association." It is accordingly in order for the Association to give such directions as it sees fit relative to the publications of the Association. The constitution makes it the duty of the Executive Committee to make appropriations to carry on the work.

Heretofore the Association has published a full report of the annual meetings, and it is assumed that it is desired to continue to do so. It is believed that a special effort should be made to obtain the earliest possible publication and distribution of these reports. It has been a not uncommon practice for authors to take their papers home for revision, and this always causes a great deal of delay, and has even resulted in the loss of valuable papers read before this Association.

We recommend that the papers read be left on the Secretary's desk at the time they are presented and that the Secretary deliver them to this committee immediately at the close of the annual meeting. Authors can be given an opportunity to correct the proof sheets. This should insure the distribution of the reports early in October.

This Association exchanges reports with other state associations and places our reports in all the principal libraries of the country. Nearly all other state associations evidence a very commendable pride

in their publications, which are, generally, very good samples of the book maker's art, well bound in cheap, but substantial and attractive covers, making a valuable addition to any law library.

Our own reports, both in the matter of covers and general make up, do not compare favorably with the large majority of our exchanges and are not a credit to the Association. While we have been handicapped for lack of funds, we think there is room for improvement at slight expense, and we ought to have sufficient pride in the matter to overcome the difficulty of increase in cost. We consider this an important matter, worthy at least of your consideration. We recommend that enough copies be bound in suitable board or cloth covers to supply our exchanges, and all members who are willing to pay the slight cost of binding their volumes, if funds can be made available. We think the Executive Committee should be informed of the sentiment of the Association on this subject. Respectfully submitted,

ARTHUR REMINGTON, *Chairman.*

MR. PRESIDENT—Gentlemen, you have heard the report of your Commitee on Publications. What is your pleasure with respect to it.

MR. SMITH—I move that we adopt the report.

Seconded and carried.

MR. PRESIDENT—Gentlemen, some have asked concerning tomorrow and I will make the announcement of that at this time while nearly everybody is here. Tomorrow, at nine o'clock, the steamer "Skookum" will leave Burroughs' dock in this city, and all attorneys and their wives or families who may be here will go upon that boat. We will then proceed to the Eighth street dock at the city of Hoquiam, where the boat will stop and pick up such as are stopping in the city of Hoquiam, and they should be at the dock not later than half past nine. We will proceed, then, down the bay to the north side of the entrance and inspect the Government work in building the jetty. I think arrangements will be made or have been made whereby the superintendent in charge of those works will provide transportation for us out over the jetty works. We will then cross to Westport where we will land. The only unpleasant feature, I hope, of the

whole program tomorrow follows the landing there. It is about two miles, I think, from the landing to the Hotel Essex where the banquet will be held and where you will all stop, but there will be transportation there for most of us and possibly some will prefer to walk. You will understand and appreciate the difficulty, I hope. There are no railroads leading to that country, and the means of access, for everything and everybody going in there, is by boat, and it may be a little inconvenient right there but I hope every person will be patient with us until we get down to the hotel, where I think you will find it very comfortable. You will get your lunch there or the people may arrange something in the nature of a clam bake instead of luncheon. At eight o'clock, or thereabouts, the banquet will be held in the Essex Hotel at Cohasset Beach. On the following morning, at eleven o'clock, the same boat will leave Westport for both Hoquiam and Aberdeen and get you back in time to get your lunch and take the afternoon train leaving Aberdeen at half past three. It is the desire of the Chehalis Bar Association that every person who finds it possible may attend this banquet. We feel that every person will have a good time. We have been hard at work and we will have a vacation down there for a day or two. You will find accommodations at this hotel for the night and for as much longer as you may choose to stay.

The next is the report of the Judiciary Committee.

Read by the Secretary, as follows;

REPORT OF JUDICIAL COMMITTEE.

To the Officers and Members of the State Bar Association:

Your Committee on Judiciary begs leave to report as follows:

At the last session of the legislature certain amendments were made to the Direct Primary Law, having the effect to remove the nominations for supreme judges from the operation of its provisions and placing such nominations in the hands of conventions. The particular clause affecting this result is found in Sec. 11, page 179, Session Laws of 1909, and reads as follows:

"Candidates for judges of the Supreme Court shall be nominated by a convention of any political party or parties in the manner provided by existing laws for conventions and the names of such nominees shall be certified to the Secretary of State and shall be placed on the official ballots under the party designation of the party so nominating them, or if by a joint convention of two or more political parties, then under the political designation of each party joining in such convention."

It is the view of this committee that this change in the matter of nominating judges of the Supreme Court ought not to be the occasion for making such nominations partisan. We believe it is the opinion of members of the bar generally that political consideration ought not to enter into the selection of judges. A large part of the opposition which this change in the law has occasioned has been due to the public dislike for the partisan system. It is therefore the view of your committee that in some proper manner this Association should endeavor to secure the making of judicial nominations by joint conventions of the leading political parties rather than by the independent action of each. The statute, it will be observed, authorizes the holding of joint conventions. We therefore recommend that a committee of three members of this Association be appointed, consisting of the incoming president and two other members to be appointed by him, for the purpose, at the proper time, of waiting upon the managing agents of the two leading political parties and requesting them to join in the issuance of a call for a joint state judicial convention for the nomination of judges of the Supreme Court, and that they represent to such managing agents that it is the sense of this Association that such nominations be made in joint convention rather than by conventions of each party separately. Respectfully submitted,

HARRY BALLINGER, *Chairman.*
L. R. HAMBLIN.
C. R. HOVEY.

MR. PRESIDENT—What will you do with the report, gentlemen?

MR. CHRISTIAN—I move, Mr. President, that the report be placed on file.

Seconded and carried.

MR. PRESIDENT—Gentlemen, I desire to say that it had been arranged that Mr. Oscar Cain, of Walla Walla, would deliver an address here and also Mr. Robert Cassiday, of Vancouver, British Columbia, but for unavoidable reasons neither of these

gentlemen have been able to attend, and we will therefore not have the pleasure of hearing these gentlemen. However, the Secretary informs me that Mr. Cassiday may be in on this train which should arrive here at any moment. We will hear the report of the Committee on Legislation.

MR. SECRETARY—No report.

MR. PRESIDENT—The report of the Committee on Community Property. Mr. Post.

MR. POST—Mr.Chairman, two years ago this Association had the misfortune to listen to a paper on the community property law of this state and, after the paper was read, somebody made a motion that a committee of three be appointed to prepare some bills suggesting amendments to the statutory law, and such committee was appointed consisting of Judge Stiles, Harold Preston and myself. Last year the meeting of the Association was for but a day, or less than a day, and it seemed inadvisable to present a report at that meeting. The report that we have to present now was prepared only by Judge Stiles and myself because we were unable to get the assistance of Mr. Preston as he had gone away on his vacation. We spent two days and prepared three bills which we desire to present to you. We might have prepared more, and we felt inclined to do so except for the fact that we thought that probably three bills would be all that this Association, at this meeting at least, would desire to consider, and, in order that you may intelligently understand these three bills, it will probably be wise for me to refer to each and to the cause of the preparation thereof. The first bill that I desire to call to your attention is one granting to married women certain rights in the separate property of the husband which do not now exist. The early legislators of this state who originated our community property system —and I say "originated" advisedly, because it is unlike any other community property system—did not get it from Spain

or from Mexico or from Louisiana or from California, but they evidently got it up, and, although they desired to grant women greater rights than existed in the common law states, they overlooked one material feature. As the law exists today, a husband has the power to dispose of, by will, his entire separate property to the exclusion of his widow. All the property that they or he may have at the time of his death may be separate property and he may, if he desires, by testamentary disposition, give it all to his children or give it all to anybody he pleases to the exclusion of his widow. Now, to cure that and kindred defects we have prepared three proposed acts—one covering the matter of which I have just spoken, and of the others I will say more later.

REPORT OF COMMITTEE ON COMMUNITY PROPERTY.

July 28, 1909.

To Hon. J. B. Bridges, President of Washington State Bar Association:

Dear Sir: The Special Committee appointed to recommend changes in the community property law of this state, have prepared three bills which are hereto annexed, and respectfully recommend their approval by the Association and that the Association recommend their adoption to the legislature and that the President of the Association forward copies thereof to the Governor and to the chairman of the judiciary committee of each house with the recommendation of this Association.

Respectfully submitted,

F. T. POST.

T. L. STILES.

ACT ONE.

An Act relating to the descent and inheritance of community property and amending Section 4621 of Ballinger's Annotated Codes and Statutes of Washington being Section 2703 of Pierce's Washington Code.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 4621 of Ballinger's Annotated Codes and Statutes of Washington being Section 2703 of Pierce's Washington Code) be and the same is hereby amended as follows:

SEC. 4621. Upon the death of the husband, one-half of the community property shall go to the surviving wife subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband subject also to the community debts, and in the ab-

sence of such disposition, shall go, subject to the community debts, to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants then the said community property shall all pass to the survivor to the exclusion of collateral heirs, subject to the community debts, and the charges and expenses of administration.

Upon the death of the wife the entire community property, without administration, belongs to the surviving husband.

SECTION 2. All acts and parts of acts in conflict herewith are hereby repealed.

ACT TWO.

An act in relation to the power of all persons and corporations having the record title to sell and mortgage real property and protecting puchasers thereof and repealing Chapter CLI of the acts of the legislature of said state, approved March 9, 1891, entitled, "An Act to protect innocent purchasers of community real property."

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Every person, married or single, and every corporation having in his, her or its name the record legal title to any real property in this state as the same appears upon the real property records of the county wherein it is situated, is empowered to contract to sell, sell, convey or mortgage the same without the joinder of the husband, wife, *cestui que* trust, principal or any other party interested therein, to a purchaser or mortgagee for a valuable consideration; and the deed or mortgage of such holder of the legal title shall be sufficient to convey to and vest in the purchaser, or to pledge to the mortgagee, as the case may be, the entire estate in such real property free and clear of the claims of any other persons whatsoever, not of record in the office of the auditor of such county, at the time of such conveyance or mortgage: Provided that real property occupied as the homestead of married persons shall not be conveyed or mortgaged without the joinder of husband and wife in the instrument of conveyance.

SECTION 2. Any person or corporation who may have an interest in any real property in this state, the record legal title to which is held by another, may protect such interest from sale or mortgage under the provisions of Section 1 of this Act by causing to be filed with the county auditor for record in the Deed Record Books of the county, in which such real property is situated, a verified declaration of the interest claimed with the name of the holder of the record title and a description of the property against which the claim is asserted, and from the time of such filing and recording, every grantee or mortgagee of such real property shall be charged with notice of the claim of the declarant; and in the case of community real property, no conveyance or mortgage thereof shall be made by either husband or wife, without the joinder of the other, so long as the declaration of interest above mentioned is of record and uncancelled.

SECTION 3. A declaration of interest may be cancelled by the filing for record of a declaration of cancellation, referring with accuracy sufficient for identification to the declaration of interest, and acknowledged as a deed for real property; the same, to be recorded in the Deed Record Book of the county where the real property affected is situated; or a declaration of interest may be cancelled by the judg-

ment of a court of competent jurisdiction as a cloud upon title in every proper case.

SECTION 4. A declaration of interest as above provided for shall be indexed by the county auditor, in the name of the record owner of the real property as grantor, and of the declarant as grantee; and a cancellation of a declaration of interest shall be indexed in the name of the claimant as grantor and the record owner of the real property as grantee.

SECTION 5. In so far as this act affects married persons having already acquired, and now holding the record legal title to community real property, in the name of either, a period of six months from the date of passage of this act is hereby allowed to the spouse not having the record title to comply with the provisions of Section 2 hereof and, during said period of six months, neither spouse shall have the power to sell, convey or mortgage community real property without the other spouse joining in such instrument of conveyance.

SECTION 6. Chapter CLI of the Acts of the Legislature of the State of Washington approved March 9, 1891, and entitled, "An Act to protect innocent purchasers of community real property," is hereby repealed.

SECTION 7. All acts and part of acts in conflict herewith are hereby repealed.

ACT THREE.

An Act relating to the separate property of the husband and granting the wife an inchoate interest therein, and limiting the power of the husband to dispose of the same by will.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. If any person shall die testate and in his last will and testament shall fail to devise and bequeath to his wife, him surviving, at least one-third of his separate property and estate, real and personal, or the equivalent thereof, out of said separate property and estate, such testator so far as such wife, him surviving, is concerned shall be deemed to die intestate; and such wife, him surviving, shall be entitled to such proportion of the separate estate of said testator, real and personal, as if he had died intestate, and the same shall be distributed and assigned to her, and all other heirs, devisees and legatees shall refund their proportional part.

SECTION 2. The Superior Court sitting in probate shall have power to determine all questions arising under the provisions of this Act, and make distribution and division in accordance herewith.

MR. POST—You are all doubtless aware that, if the husband dies intestate, the statute gives the widow an interest in the separate property, upon some conditions a third interest, and upon some a half interest.

Now, one bill that we have prepared is in relation to the descent or distribution of community property. You are aware that the law, as it is today, provides that upon the death of the husband, one-half of the community property goes to

the widow; upon the death of the wife one-half of the property goes to the children and the other half to the husband. You are also aware that in England and all her colonies and in all the states of this Union that have, in effect, the common law or something akin to the common law, the provision generally is, no matter what you call it, that upon the death of the wife, no part of the property that has been acquired subsequent to marriage goes to the children but all of it either goes to or is retained and managed by the husband, and I presume you are also aware that, in many community property states, a similar provision exists. The only states that provide for one-half the community property going to the children upon the death of the wife, outside of our own, are, I believe, Texas and Nevada and now Idaho, though not formerly. We have prepared an act that is a substantial accordance with the California statute. You are also aware that our act that provides that upon the death of the wife, one-half shall go to the children, is evaded as much as possible by all people outside of lawyers and also by lawyers, generally, because of the great harm that results therefrom. To require a small farmer or a small merchant, or any ordinary man in business, to have the entire business of that man or the entire property that has been accumulated, thrown into the probate court upon the death of the wife and one-half of it turned over to the children, under ordinary circumstances works great hardship not only upon him but upon the family. Now the act that we have prepared to cover this is the first one read.

As I said before, this is, in substance, the California statute and the only material change, except in verbiage, is the one that I have mentioned.

Now, another act that we have prepared is the one repealing an act passed in 1891 entitled, "An act to protect innocent purchasers of community real property," and governing that subject more fully. You will all doubtless remember what

that act was. While it said it was an act to protect innocent purchasers of community real property, it was a delusion and a snare and nobody has ever paid much attention to it. The situation now is, as you are all aware, that a person named as grantee in a deed and who has the record legal title to a piece of property, does not have the actual legal title. We have the anomaly of having a recording statute which is supposed to give notice and supposed to tell the truth which does not tell the truth. Now this act, the second one, explains itself.

The third act relates to the right of the wife to an interest in the husband's separate property.

MR. POST—I will move the adoption of this report and the recommendations.

MR. STERN—It seems to me, as the legislature cannot take any action on these bills until after our next session, that we had better postpone their consideration until the next meeting, and, in the meantime, the report will be copied into our minutes, I suppose, and we will all have a chance to study these bills, and so I move that the report of the committe be received and placed on file.

Seconded, put to the house and carried.

MR. BRONSON—Didn't I understand that that was to be placed on file for consideration at the next meeting?

MR. PRESIDENT—Yes, sir; that was the idea, that it was thought advisable to discuss it at the next meeting rather than at this time so that everybody could become acquainted with the bills.

MR. STRATTON—It seems to me that this meeting would be the time to discuss the bills, but defer action on them until the next meeting. I have no objection to postponing action on them until the next meeting, but I think we ought to discuss them at this meeting and we can get more fully the ideas of the men who drew the bills. For instance, what effect

would the second bill that Mr. Post read have upon community property already acquired? Would that act take away the rights that we have as under existing laws? Has the wife such a vested right in community property already acquired that this act would not affect the interests that she has? That, and similar questions, it seems to me, ought to be discussed this evening.

MR. PRESIDENT—The chair feels that the matter is one of a great deal of importance and, notwithstanding the action taken, I had thought of asking permission of the house this evening, if the time could possibly be found, to ask these two gentlemen of the committee to address the Association, giving us the benefit of their ideas so that we may have them for the future.

MR. BRONSON—If there is no motion before the house, I move that this report be made the subject of consideration and put upon the calendar for our next meeting. My idea is that this is a matter of great importance and that we want to consider it and want to discuss it after due reflection. That was my understanding of Mr. Stern's motion.

MR. PRESIDENT—I so understand it, that that was the motion and the motion that was carried.

MR. PRESIDENT—The report of the Committee on Legislation.

MR. SECRETARY—No report, Mr. President.

MR. PRESIDENT—Gentlemen, I desire to say that Mr. Cassiday, who sits here by me, has arrived on the afternoon train, after a long trip and he is quite tired and would much prefer, if convenient to this body, to speak this evening instead of this afternoon, and I believe that the Association can this afternoon take up other matters and, unless there are objections,

we will do so. We will have the report of the Committee on Juvenile Courts.

MR. SECRETARY—No report.

MR. PRESIDENT—The report of the Committee on Obituaries, Justice George E. Morris.

MR. MORRIS—Mr. President, and gentlemen of the State Bar Association: The saying that "death loves a shining mark" has never found truer or better exemplification than it has in the death of distinguished members of our profession during the past year. Since we last met, in Seattle, the Silent Reaper has been very busy among us and has removed from our midst many distinguished members of our profession; many of them full of years, all of them full of honors; among them Samuel G. Cosgrove, Governor of this state and one of the best known and most distinguished members of the bar of Eastern Washington; the honorable T. J. Anders, for fourteen years a Justice of the Supreme Court of this state; Honorable Frank Allen, a Justice of the Territorial Court and latter Judge of the Superior Court of Thurston County; Honorable O. V. Linn, at the time of his death presiding over the Superior Court of Thurston County; Honorable Francis W. Cushman, a member of the House of Representatives from the Second Congressional District of this state and who had a national reputation as a wit and orator; the Honorable A. G. Kellem, formerly Justice of the Supreme Court of North Dakota and who, for many years prior to his death, was a member of the Spokane County bar; and Mr. E. Victor Palmer, of Seattle.

The committee has been somewhat handicapped from the fact that Mr. Leuders, of Tacoma, and myself are the only members present and, if any member of the Association, knows of any member of our Association other than those that I have mentioned who has died during the past year, we should be very glad to have their names suggested in order that they might

be included in the report. The committee has made arrangements, as is indicated on the program, to have appropriate addresses made of behalf of most of these gentlemen. That on the late Governor Cosgrove has been prepared by Mr. Justice Gose of the Supreme Court and is now, I understand, in the hands of Mr. Justice Chadwick. That of Honorable Frank Cushman, I understand, is to be delivered by Judge Reid, of Tacoma, and Mr. Leuders, of Tacoma, will also speak. That of Judge Linn by Mr. P. M. Troy, of Olympia, and that of Mr. Justice Anders by Judge Sturdevant. I would be very glad if Mr. Post or some other members of the Spokane bar would say something in regard to Mr. Kellam.

Eloquent addresses were delivered in honor of the deceased brothers. (See appendix for Obituaries).

MR. PRESIDENT—I believe that concludes the program with the exception of the address we are to have this evening.

Upon motion carried, adjournment was here taken until eight o'clock P. M.

EVENING SESSION.

Eight o'clock p. m.

MR. PRESIDENT—Gentlemen, if you will please come to order, we will proceed to business.

MR. SECRETARY—Mr. President, in connection with the American Bar Association, there are several sections of it. One section is called the Comparative Law Bureau. I have a notice to the effect that we are entitled to three delegates to that also. I move that the incoming President find, if he can, delegates to attend that, as well as those we are sending to the

American Bar Association, and, if none can be found, that he commission those delegates to the American Bar Association to represent us also before that bureau.

Seconded and carried.

MR. SECRETARY—Mr. President, there is one other thing to which I want to call attention. We have been at considerable expense, as the report of the President showed you, and it may be possible we shall be short of funds. In case we are short of funds, I move that the Executive Committee be authorized to levy an assessment, if necessary.

Seconded and carried.

MR. PRESIDENT—Gentlemen, we have with us this evening, having arrived on this afternoon's train, Mr. Robert Cassidy, of Vancouver, British Columbia, who has very kindly consented to come over and talk to us, and his subject is "The Courts of Canada." I am sure we will all be very glad to hear from Mr. Cassidy. (Applause).

(For Mr. Cassidy's address see appendix).

MR. PRESIDENT—Mr. Cassidy, on behalf of the Association of this state, I desire to thank you very heartily for the address which you have given us, and to assure you that we duly appreciate your being here and what you have done.

MR. PRESIDENT—Gentlemen, there was one order of business, as I remember it, that was put over this afternoon to be completed to-night, and that was the report made by the Committee on Community Property. That matter, as I remember it, was left open to some discussion to-night and particularly that the Association might hear from the members of the committee who are present. What do you desire, gentlemen, concerning that matter? Mr. Post is called for. Mr. Post, I think the Association would be glad to hear from you concerning these proposed bills which your committee has pre-

sented. They are matters of importance and I think we would all like to be enlightened.

MR. POST—I thought the matter had gone over until the next meeting of the Association, and also I had said, this afternoon, all I cared to say about it by way of preface, unless someone had some expression to make or some question to ask. Judge Stiles is here, I think. He was on this committee, and I have no doubt he would like to express his views about this proposed change in the law, as a matter of preface, perhaps. If some thought, while these proposed bills were being read, came to the mind of any one and caused him to wish to make some inquiry in regard to it, if I can render any assistance I would be glad to do so, but I do not know exactly where to start.

MR. BYERS—The proposed change in the community property law makes a different rule when the husband dies than when the wife dies, as I understand it. When the husband dies the property descends to the children, and when the wife dies it does not.

MR. POST—There is no proposed change when the wife dies. When the husband dies the half goes to the widow. The other half is subject to testamentary disposition. Really the proposed change is that, on the death of the wife, the entire community property shall go to the husband without administration. Reasons for the change are many. As it is now, as I think you all know, upon the death of the wife in most cases a great deal of harm would result to the family, not only the husband but to the children, especially when they are minor children, if the law were availed of. The fact is that the law is not availed of; that the law is evaded by people generally and often under the advice of lawyers. Lawyers evade the law wherever they can. You take the case of a farmer, for instance, as that may, perhaps, be an ordinary case; a man

who has one hundred and sixty acres of land, who has a little personal property, owes some debts, has a little mortgage; he has two or three small children; his wife dies. Now, to have an undivided half interest in that farm go to those small children is simply to tie his hands so far as future business is concerned.

MR. BYERS—Why would not the same rule apply if the husband dies?

MR. POST—The fact is it is impossible, by legislation, to change the natural law that a father is the head of the family. When the mother dies business goes on; it is supposed to go on; it must go on. When the father dies, business ends; it ceases. Then there may be—perhaps ought to be, a division. The law that prevails as common law, as you are aware, and that has prevailed for centuries in this regard, not only in England and all her colonies but generally throughout the United States, gives to the wife only an inchoate right in property, or property acquired after marriage, and, upon her death, nothing of that property acquired after marriage goes to her children. That is the ancient doctrine, that none of that property is distributed, none of it goes to the children. The father, hampered by the death of his wife and the care of his family, is not hampered by law. That prevails generally throughout the United States. It prevails even in those states whose people thought they were wiser than the Anglo-Saxon people and adopted this community property system which originated in barbaric Spain. The provision we ask for is such a provision as prevails in California. It is also the system which prevails in our sister state of Idaho. They have a community property law but they have a system purer.

MR. LEUDERS—Does that apply to the homestead as well?

MR. POST—Yes, sir; it applies to all community property.

A VOICE—Is there any reason why it should not all descend to the wife upon the death of the husband?

MR. POST—I do not know, I am sure, but that it might. But that sort of innovation, I understand, has never been adopted anywhere. We are not attempting to originate something new. We are attempting, if possible, to adopt something that has been tried and found successful and seems well in accordance with reason. It might be, upon the death of either spouse, to have the entire community property go to the surviving spouse, but we did not undertake to change that part of it because such a change has not met with the approval of anybody up to date.

MR. BYERS—Isn't it a fact that our law now provides that in case there are no children, all the community property goes to the surviving spouse?

MR. POST—Well, we provide in the same way in this. We provide that, upon the death of the husband the half goes to the wife and the other half to the descendants, if there are any, but if there are not any, that is, children or grandchildren, none of the property shall go to collateral heirs but it shall go to the survivor.

MR. HUDSON—Mr. Post, do you think the vested right in community property already acquired could not be changed by this law?

MR. POST—No, sir; not as to the law of descent. It has been decided, I think, by the Supreme Court of the United States that there is no vested right in descent. The state has power, if it desires, to say, upon your death, that the property can belong to the state. The state can control that as it pleases.

I think the state, through the legislature, has power to say how all real property shall be conveyed; that is, they may say the method of conveyance. That is all we are saying, that

the person having the record legal title shall have power of conveyance unless some other person who may have an interest in it shall, within a certain length of time, file a statement in the auditor's office of that equity and, in that event, that interest will be protected; that is, the person having the record title will not have the power of conveyance so as to cut off that interest.

MR. LANGHORNE—Virtually divesting the wife of all power?

MR. POST—No; it will and it won't, that is to say, the act provides that, as to property not occupied as a home, that is, the homestead, the person having the record title shall have the power of disposition. That may be the husband and it may be the wife. In many cases it may be the wife, unless the other spouse shall file this declaration. Of course, it is true, as a matter of practice, that the husband has practically control of the disposition of all property now. That is, where the husband and wife are living in harmony, the wife signs whatever deed the husband asks her to sign. Where they are not living in harmony, the wife has the way pointed out to her to protect herself now. But it seems to me that our statute, as it is now, is an absurdity. We have a recording act. We have a deed running to John Smith, grantee, and we have the deed gravely put of record and, as it is now, John Smith doesn't own the property at all. The person named as grantee in the deed does not have the legal title. You realize that the community property law is *sui generis*, different from anything else that exists anywhere.

MR. PRESIDENT—Judge Stiles, you are a member of that committee and I think the gentlemen here would be glad to have your ideas, if you have any in addition to those expressed.

MR. STILES—Well, Mr. President, I am not loath at all to give voice to the faith that is in me. A few years ago Mr. Post was assigned the duty of writing a paper on the subject

of the community property law. He wrote a paper, which is published in the proceedings of this Association, which was so satisfactory to the members of this Association who were present and heard it that they directed him and appointed a special committee to assist him to draw bills in accordance with his recommendation. Now, I take it that this matter is never to be determined upon the question whether or not somebody may commit a fraud under this act. You cannot pass any legislation which will not be subject to that kind of attack. We find it under our present system. Now, as Mr. Post has said, we have a system in the state of Washington pertaining to real property called the community property doctrine or practice or what you please, but it is an anomaly in real estate conveyances. Our real estate records in the counties—and I assume it is the same in other counties that it is in Pierce—are plastered full with affidavits by men who say that John Smith, about thirty-five or forty years ago was a single man, at the time they acquired the property. Of what value is such an affidavit? It doesn't amount to anything legally. It is simply the assurance of somebody, who claims to know, that John Smith at that time was unmarried. The man who takes title believes that affidavit and goes on his way, and yet John Smith may have had one, two or three wives for all anybody knows.

A VOICE—That is only in Pierce county.

MR. STILES—Gentlemen, the men in Pierce county are very attractive and they are likely to have such a thing happen. Another thing: You may come right down to date. You gentlemen are called upon to pass a title and you see in your abstract that the man who owns the title is named William Brown; nothing to show on the deed by which he acquired the property whether he was married or a single man; or maybe he said that he was a single man, and it may have been a lie;

or, if it does not, you go and say, "William Brown, were you a married man at that time?" "No." And you take his statement and take his deed; or, if he does not happen to be around, you take an affidavit of somebody and put it on the record and you tell your client, "Now, it is all right; Brown was an unmarried man," and he may have had a wife right around the corner. Under the Torrens act, where you register your title, you accomplish the same thing, but that is a matter that has not gone far enough yet for our people to understand it and have much faith in it, and besides that, it is too expensive when it is applied to a small property.

MR. STRATTON—I move you that, when we adjourn this evening, the adjournment be taken to meet at the Essex Hotel, Cohasset Beach, tomorrow night at seven o'clock. There may be other business to come up.

Seconded, put to the house and lost.

MR. SECRETARY—Mr. President, I move that, when we adjourn, we meet again at the Essex Hotel tomorrow night at 7:30 o'clock to transact only such business as nobody objects to at that time.

Seconded, put to the house and lost.

MR. BYERS—I move we adjourn.

Seconded.

MR. TROY—Mr. President, before you put that motion I would like to offer a motion that the thanks of this Association be extended to the officers of this Association for the manner in which they have prosecuted the business, and also to the Chehalis County Bar Association and to the people of Aberdeen and Hoquiam for the courteous and kind treatment we have received, and also the Elks lodge for the use of this hall.

Seconded.

MR. STERN—I rise to a point of order. That motion must

be stated in sections because the first part of that is unconstitutional. We never thank our officers.

VICE PRESIDENT SHANK—Those in favor of the motion made by Mr. Troy will express it by rising. It is unanimous.

MR. POST—It seems to me, Mr. President, that it is extremely probable that at the next meeting of this Bar Association the question of the proper method of selecting all judges will come before that meeting, and it seems to me that it would be wise if somebody gathered some statistics on this subject; that is to say, statistics as to the method of selection of all judges, *nisi prius* and appellate, that prevails in the different states of the Union and the opinions of the several presidents of the various state bar associations as to the system prevailing in their particular states, and with that idea in view, I move that the President of this Association appoint a committee of three to gather such statistics only and to present the same to this Association, without any recommendations whatsoever.

Seconded, and carried unanimously.

MR. PRESIDENT—I think it would be well to deliberate some upon that appointment, and I think probably the incoming President had better make the appointment.

MR. LANGHORNE—Mr. President, I have a matter I think of some importance that probably ought to be called to the attention of the Association. There was a committee of three appointed by the chair, of which I was one, looking to the disbarment of Mr. DeWolfe. Now, that committee is not the regular Grievance Committee of this Bar Association. We have certain committees provided for in our constitution and by-laws; among them the Grievance Committee. This committee I have called your attention to is named as a special committee. Now, the proposition that is in my mind, is this: Who will be the proper relators in a proceeding against Mr. DeWolfe? Will

your special committee have the right, on their own initiative, to act as relators—to act in their private capacity as members of the bar or in their official capacity as members of the committee of this Association? I want to call it to the attention of the Association, because we do not want to attempt to do a vain thing. We do not want to institute proceedings of this kind and then have it declared that the relators have no capacity to institute or bring the action.

MR. SECRETARY—I move that if, in the sense of this special committee, it shall be necessary to name the Bar Association of the State of Washington as relator, it shall be authorized to do so.

Seconded and carried.

MR. PRESIDENT—It has been moved and seconded that we adjourn. Gentlemen, before putting that motion I desire, on behalf of the Bar Association of this county, to thank all of you who are visitors for your attendance and for your very great interest in this meeting, and, personally, I desire to thank every member of the Association, and particularly those who have been actively engaged in the assistance of the officers during the past year, and they have been numerous.

Upon motion carried, the Association adjourned.

SATURDAY.

(Note by the Secretary):

As the guests of the Chehalis County Bar Association we were taken aboard the Steamer Skookum at Aberdeen and Hoquiam and carried to Brown's Point, where the government is building a jetty or sea wall into the ocean. A special train transported us to the outer end of the jetty, three miles out into the ocean, where we witnessed the dumping of a train load of rock into the water, as a part of the jetty still building.

On reboarding our steamer we were taken to Westport and thence by land to Cohasset Beach, where the afternoon was spent in the enjoyment of a clam bake, in sports, riding in automobiles along the beach, and in general frolic. In the evening at the Hotel Essex we were treated to an elaborate banquet presided over by E. J. Adams, whose ready wit and good humor made the occasion memorable. Responses were made by Chief Justice Rudkin, Judge Chadwick, Judge Parker, Judge Morris, Judge Kellogg, F. T. Post, S. R. Stern, L. F. Chester and others.

Standing toasts were drunk to the retiring president, J. B. Bridges, for the great success of the meeting, and to the Chehalis County Bar, to the Supreme Court, to President Taft, and others.

The menu cards, incased in hand painted shells of the razor back clams, read as follows:

MENU.

Martini Cocktail Toke Points en Coquille Sauterne

Clam Fritters a la Rissole

Radishes Olives Green Onions

Claret

Sucking Pig Compote de Pommes

Spring Chicken Sause a la Champagne

Salad de Crab a la Mayonnaise

Champagne

Glace Neopolitaine Fruits Bon Bons

Cafe Noir Aree Cognac

Cigars

APPENDIX

PRESIDENT'S ADDRESS

J. B. Bridges, Aberdeen, Wash.

Gentlemen of the Washington State Bar Association.

During the past year the bench and the bar, by various incidents, have been, to a greater extent than heretofore, brought under public notice. Their merits and demerits have been quite thoroughly discussed. Some praise and commendation have thus been given and they have been deserved; considerable adverse criticism has been made and possibly, at least in so far as the bar is concerned, not a little of it has been deserved.

The legal profession being a learned one, the public has a right to demand and does demand that its members shall be learned; being a profession the intricacies of which are unknown to the average man, the public demands and has a right to demand that its members posses more than the usual amount of honor and honesty; being a profession which of necessity is capable of so much good and so much bad—being one which either directly or indirectly so interweaves itself into the general welfare and history of the country at large,—the average citizen has a right to demand that its members be fair. Every lawyer is, to a considerable extent, a public servant—a quasi public officer. And being such he is not licensed to deny the right of criticism; he is not exempt as is the strictly private citizen. But the natural law of justice requires that he be justly and knowingly criticised. The average man being so little acquainted with the mysteries of the profession, is disposed to be quick to suspicion, speedy to condem and slow to praise.

It is too often the case where ignorance of the facts or the law leads to doubt, doubt to suspicion and suspicion to an opinion and expression of guilt. It may be, and I am much inclined to believe that there is too strong a tendency and inclination in the public to misunderstand and misinterpret the motives of the members of the legal profession. However, it is the duty of the profession, as far as in it lies, to give as little cause for criticism as possible. If the law is one of the most learned, most advanced, most honorable professions, the members of that profession should have, and the public has a right to require that they shall have, the most learning, most ad-

vancement and most honor. Liability is dependent upon and controlled by responsibility. No man has a right to enter such a profession unless he can and does bring to it the powers and influences which its theoretical dignity commands.

It is most true that there will come to him many heart-aches; many disappointments; many days with leaden skies; many broken and shattered hopes; many temptations; but it is his bounden duty to so live as that he will not disgrace and dishonor his calling. The robe of the law-body is of purest white and most easily soiled.

No lawyer can be a good lawyer without learning; no lawyer can be a great lawyer without possessing great honor. Some men may seem for a time to thrive by dishonorable practices, but in the very nature of things their thrift is not success, nor can it last. The runner can foully trip his fellow and win the race, but his score will not stand because his trick will be discovered.

While there are many lawyers at this bar who would lend grace to any bar, yet it seems to me, that if we be most candid, we must admit that there is much ground and room for advancement and it is about such matters I desire to address myself. While the topic is, I confess, a most threadbare one, it seems to me it is not wholly inappropriate here and at this time. I know of no greater good this Association can do than to teach, advocate and attempt to raise the position, standing and standard of the profession.

Of late years I have become a most thorough and earnest advocate of the law school and law school education. I will be suffered to more freely express my opinion because I am not of such schools. I have had the honor to be for several years a member of the State Board of Examiners for admission to the bar. There, as elsewhere in my profession, have I been converted to the law schools. Eight times out of ten can the examiner tell, by reading the answers to the first half dozen questions, whether the applicant is a law graduate or not. If he is his answers will show that he is grounded; that he is familiar with the fundamental principals of the law; that he has unlocked the door of and boldly entered into the solemn temple where law resides. It is most beautiful and satisfactory, to see the young mind arrive at a correct answer, not because he has seen or read the answer, but because he knows the fundamental principals, and from them, by reason and logic, reaches the correct conclusion.

No man can hope to learn by experience or by example, the proper solution of the thousands of questions which must come to him while in the actual practice of his profession; but any fair minded man may hope, by dint of hard labor, to learn the basis and foundation, from

which, by reason, he can usually arrive at correct conclusions. It has been argued that the self-made lawyer gets earlier into the profession; that he gains by experience what the other gains from his teachers. To some great minds this argument applies, but it does not to the average mind. With as much reason may we advise the child to teach himself to learn to read, as to advise the young man to teach himself the law. One is as much a child as the other. The self educated lawyer builds his house on the sands, while the other builds on the rock. The first must always protect himself against every legal storm and every tide of battle, while the other lives in full confidence of the security of his foundation. I would not be understood as applying what I am saying to every self-educated man. Many such find that they are able to cope and do legal battle with him who has had the other advantage; many such find their self made legal armor as true steel as that of their opponents who learned the art from those most learned in the art. But these men are exceptions. They succeed not because of their self education, but in spite of it. Had they had the advantages of a law school education, they would have been greater lawyers.

It is by no means all of a lawyer's duty to know what the law is—he should know why such is the law. It will not serve to tell a Court what the law is; what the Court wants to know are the reasons one has for his assertions. He must not only be fully acquainted with the mouth and terminus of the legal stream, he must have followed it to its very beginning and source. He must not only know that when a man stands by and does not speak when he should have spoken, he will not be permitted to speak, but he must know why he was bound to speak; he must know not only that the servant assumes all the usual, ordinary and apparent risks of his employment, but he must know why he assumes them.

Look where we may, whether at the bar or upon the bench, we will find, we must find, the best and the safest lawyer is he who is best grounded; he who arrives at his conclusions by process of reasoning based upon fundamental principles. These are taught in the law schools. I have not the greatest confidence in the law school which sacrifice fundamental principles to teach the practice of the law. The latter is largely a matter of form and comes readily by experience. But we have in these great law schools great fundamental lawyers, and it seems to me that it stands to reason that one who has been taught by such men, must go into the profession better equipped than if he had read law in some law office. In this day and age the law schools are most plentiful and thorough, and I am firmly convinced that all lawyers should encourage those who seek to enter the profession, to receive, if possible, a law school education.

In no other country of the world are the laws so complicated and the business interests so many and difficult. Consequently no where else is there such need to have in the legal profession, minds which have a proper bent and framing.

Mr. Justice Brewer has said: "If our profession is to maintain its prominence, if it is going to continue the great profession, that which leads and directs the movements of society, a longer course of preparatory study must be required. A better education is the great need and the most important reform."

This great need of trained minds has called forth the law schools. They are of comparatively recent growth and development. But in recent years their growth and usefulness have wonderfully increased. The course of study has been and is gradually becoming longer, wider and more thorough; the best lawyers of the country are employed as teachers. The facts are that the time has nearly passed when young men who have received their training and legal education in law offices, can, as a rule, cope with those who have graduated out of the law universities.

For some years past the American Bar Association has been actively encouraging these law schools, and it has been even seriously discussed whether any man should be admitted to practice law who has not had his preliminary training in the law school. I am not prepared, however, to advocate such a doctrine; but I am prepared to assert that the profession owes it as a duty to itself, and to the public, to do whatever it can to advance the efficiency of the members of the profession, and that in my judgment the best results can and will be obtained in the law schools.

The president of one of the leading universities recently wrote about one thousand of the leading lawyers in his state, asking them their opinion of the relative value of the law office and the law school education; all but seven strongly advised the law school education as being much more efficient and satisfactory than the other. This example shows the trend of thought. It is much stronger in the East than here; but the reasons for it are fully as strong and cogent here as elsewhere.

The New York State Board of Examiners reported that they "found that the men who come from law schools are twice as well qualified nearly as those who apply from law offices," and that they were "thoroughly impressed with the idea that individual success at the bar can only be had by a thorough, systematic and scientific training taken by a diligent scholar in an approved law school."

Similar expressions are to be found in the various reports of the

transactions of the American Bar Association, and the bar associations of the various states.

But not all of us who enter the profession can, for various reasons, take advantage of such education. Therefore, the test of admission to the bar should be thorough. In my humble judgment the state bar examinations have been and are to-day very inadequate and insufficient. Such examination has been and is now looked upon by lawyers and students as a kind of farce—a play—a vacation. The standard is altogether too low. Men are suffered to be admitted upon the principle that they do not know enough law to hurt; we have permitted our sympathies to govern and control our better judgments. We admit men and send them out into the world with an honored license to practice a learned profession, to advise others on the complicated questions which in the business world arise, when it is known full well that such men know too little to be safe, and enough to be dangerous. The common expression, "A little learning is a dangerous thing," must have been applied to the legal profession. The effort at these examinations, is to reject as few as possible. In our sympathy for the applicants we forget our duty to the profession, and to the people of the state. A few hours are given by the board in preparing questions. They must not be too difficult or cover too much ground, because the student has but one day in which to answer them. The board, because of limit of time, must hurry through the examination of answers. The markings are loose. If the answer indicates that the student has some faint idea concerning the correct answer, the board is impelled to give him the benefit of the doubt, and at least divide the marking with him. Up till the last few months it was wholly immaterial whether the student had any common education; it was nothing if he could not write; it counted not against him if his language was such as to make a learned profession blush. And so upon the recommendation of the board have such persons appeared, on the day following this awful test—this speed and sweating exhibition—before the court *en banc*, held up their trembling hands, taken the beautiful oath of the lawyer, received their diplomas and gone out into the world to honor the legal profession, and give advice on the great, complicated and weighty affairs of the layman.

It is no wonder that the profession is jeered at. It is no wonder that it is criticised; it is no wonder that there is a lack of confidence. I will, I hope, be pardoned for speaking so frankly on the subject. Having been and being now a member of the examination board, I feel at liberty to criticise its actions. But, in fairness, I do not think the board should receive too much adverse criticism. This character of examinations is made necessary by the law; it has been winked at

and approved by the profession. Lawyers over the state send in certificates that the applicant is learned in the law, when they know that he is not, and the board follows the time honored custom of passing the applicant. I believe the whole method of these examinations should be remodeled. The examinations should consume the larger portion of a week; the questions should cover a wide field; they should be both written and oral; the markings should be honest, fair, but close; those who have not the required knowledge should be rejected for their own good, and the good and welfare of the public. The Supreme Court should be at liberty to choose at will the examining board, and that board should be paid such compensation as would justify its members in justly and faithfully performing their duties. I believe the whole scheme of these examinations should be remodeled, raised and elevated. By so doing, the standing of the whole bar and profession will be raised and elevated, and the profession restored to the confidence of the people.

Through the influence and action of this Association, and particularly the Committee on Legal Education, the last legislature passed a law, which has tended in the right direction. That law provides that "No person shall be admitted to such examination unless he present to the Court evidence that he has sufficient general education to admit him to the freshman or higher class in the state university, or has completed a full four year course in a high school of approved standing, or holds a certificate or diploma recognized as equal or equivalent to a diploma from such high school, or is holder of a first grade teacher's certificate in this state or a certificate of a higher grade."

I know of no better way to raise the standard of the profession than by raising the scale of education and learning possessed by the members of the profession.

The committee of this Association on legal education in its last report to this Association most truly and aptly said: "It would seem too plain for argument that, other things being equal, the attorney with a liberal education must be superior in the practice of the profession to him who is not thus equipped. It would seem self evident that a man whose mind has been drilled and disciplined and stored with useful knowledge, must be more capable as an adviser or advocate than if he had not these acquirements."

I think nearly, if not quite, one half of those presenting themselves for examination in this state come directly from the busy law office where the student has been left to grope his way in the darkness. As a rule his answers show his lack of training; he is uncertain; he lacks confidence in his knowledge and his reason; seldom is he quite sure of

the correctness of his answer. Yet it has been the custom to pass him. During the last five or six years I think no greater than ten or fifteen percent of the applicants have been refused admission. Although a larger per cent of the applicants in England and the eastern states are from law colleges than will be found in this state, yet we find there the percentage of failure much greater. In England for 1906 such percentage was twenty-seven; for the same year in Scotland forty-four per cent failed; in New Jersey fifty-six per cent failed; in New York twenty-three per cent; in Pennsylvania thirty-four per cent; in Massachusetts forty-five per cent; in Connecticut twenty-eight per cent; in Illinois nineteen per cent.

It will thus be seen that the work of the State Bar Examiners in the other states has been much more thorough and concientious, than in the State of Washington.

Our statute provides that, if the applicant for the examination is from a law office, he must present to the board proof that he has studied law under some attorney for the peroid of two years. In my judgment this period should be made three years, and preferably four years. A student in a law office cannot hope to accomplish as much in a year as the student of the law college, yet none of the law schools graduate their students in less than two years, and the greater portion of the best colleges require a three year course.

In 1907 the American Bar Association passed a resolution approving a rule requiring candidates for admission to the Bar to study law for three years if in a law school, and for four years if not. It may be that in this country we are yet too liberal and democratic to require that no man shall enter the profession except he be a graduate of some approved law school. For many years to come we are likely to insist that the self educated man shall not be barred. And I believe this is right. But he should not expect to receive nor should he, on that account, receive any sympathy. This possition is not one of arrogance; not one of independence; but one which the bar owes to itself and to the public, to take.

If we will but teach the advantages of a law school education and training, and by act and word encourage these qualifications; if we will see to it that the examinations for admission to the bar are conscientious, honorable and thorough, we will have done much to elevate the profession and accomplish much for the general welfare of our fellow citizen. Shirk the burden and responsibility if we can, yet the bold fact and truth remains that the character of the young man in the profession, the condition of the bench and bar, is dependent on the

bar itself. It alone can lower or raise the standard. It alone must answer.

But no man can be a good or great lawyer without having a broad mind. The lawyers and courts are constantly making law and establishing principles which for time to come must be the lead and guide of the people. So closely is the law connected with philosophy, history, poetry and science that every lawyer should be versed in those things. No decision of the courts can be well grounded and entitled to stand and be a guiding star, except it take into consideration all of these miscellaneous subjects. No man's mind can be broad which is fed only from the legal table. It has been said that the law is heartless. It is not. It is not passionate, but it is filled with compassion; it is not impulsive, but it is quick to redress; it sheds no tears, but its vessel is always filled with mercy. And so is the soul of the law mellowed, softened and tempered by these things, and so is the lawyer and the Judge, by a liberal education and wide reading, broadened and brought into immediate touch with the affairs of the world.

I think no man can reach the high position in the law which ambition commands unless he be well versed in Homer, Shakespeare and Tennyson; in his Kant and Spencer; his Gibbon and his Hume; his Dickens, Scott and Hugo, and all the other great works which have lent light to the foot-steps of all the world. It may be said that this burden is too great. It may be. But if we look about us we will find that all the deservedly great lawyers have lifted and carried this burden. And he who does not will surely find himself lagging in the rear. The profession of the law is one of constant and everlasting hard work, and the best and most successful lawyer is the one who works the hardest.

It is much noised about here, that the profession does not as a whole bear the palm of honor; that its members too much consider that if they are fairly good and successful lawyers, they need not be good citizens; that with many the chief aim and ambition is to win a lawsuit, even at the expense of general justice. And I am not so sure that these criticisms are groundless. The law is a pure and noble calling, and speaking with reference to it one has said, "Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. The strength of a lawyer is in thorough knowledge of legal truth and in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception."

But I am much afraid that some of us often forget these grand

truths; forget that we are of a profession which is the very heart of truth. I am much afraid that some of us forget the oath which we take upon admission to the bar of the State of Washington that we "will employ for the purpose of maintaining causes confided to us such means only as are consistent with truth and honor." I am much afraid that some of us are too much open to the criticism that we would prefer to win a lawsuit dishonorably, than lose it honorably. That we too often are influenced too much by the spirit of gain. Too many of us try our suits with the golden crown and not the crown of gold before our eyes. He who uses his profession for the purpose of getting rich thereby, not only deceives himself and his client, but prostitutes his profession. Some most excellent and honorable lawyers do become rich, but they do not achieve such in their profession, but incidentally by their profession. I do not assert that the lawyers have not as much right to become wealthy as any other man; I simply say that but few become so directly out of the practice of their profession. More temptations to stray from the path of rectitude comes to the lawyer than any other man. But I firmly believe he sins at least no oftener or more than those engaged in any other profession or business. His love of his profession; his belief in the purity of it; his reverence for it acts as his guide and has a strong tendency to keep him honorable. I am fully satisfied that the general public is entirely too quick to judge the bench and the bar. It is not loath to judge the whole by the very few. Criticism is most wholesome if wisely directed. But most harmful when it is indiscreet and unjust. Let the public maintain inviolate its right to bring lawyers and judges to answer to the great public bar; but let them remember that a little unjust and unfair criticism, particularly of the bench, will accomplish infinitely more harm than a large amount of just criticism can do good. It is common sense that no man, who, because of his position is unable to defend himself, should be accused excpte upon the fullest investigation and for most substantial reasons.

That there are men in the profession who, because of their ignorance of the law, or because of dishonorable practices either as a lawyer or as a citizen should not be there, is most true; that they are not half so numerous as some profess to believe, is likewise true; that it is the duty of the bar and this association to use every endeavor to rid itself of such as are unworthy, is beyond question.

There are none who are hedged about by stronger and more drastic laws in this state, than the lawyer. Generally speaking, till recently, a lawyer to so offend as to give ground for disbarment, must have been guilty of some unprofessional conduct. The last legislature, chiefly through the efforts of the Grievance Committee of this Asso-

ciation, passed a law providing for the disbarment of any lawyer who is guilty of any unprofessional conduct or who commits "any act involving moral turpitude, dishonesty or corruption, whether the same be committed in the course of his relations as an attorney or counsellor at law, or otherwise, and whether the same shall constitute a felony or misdemeanor or not." While this statute is very strict, yet it will appeal to every fair minded lawyer and citizen.

After all, the highest and most exalted ambition of any lawyer or other man, is to be a good citizen, and no good lawyer can be a bad citizen, and no bad citizen can be a good lawyer.

This Association has in the past accomplished much good along the lines I have been speaking of; it is its duty to continue to so do. A sincere desire for advancement of the bar; for its cleanliness; for its elevation in the minds of men, prevails, and no more worthy or honorable desire could be possessed by any body of men.

Before closing, on behalf of the bar of Chehalis County, I wish to thank the Association for the honor of this visit; we cannot give you the comforts or entertainment you would receive in many other places; but the best we have, all we have, is yours. Use it as your own; for such, we have been paid by the privilege given to offer them to you.

JAMES E. BABB

Lewiston, Idaho

EFFECT OF OVERRULING OPINION OF COURT OF LAST RESORT ON RIGHTS ACQUIRED ON OPINION OVERRULED

HON. JAMES E. BABB, LEWISTON, IDAHO.

Mr. President, and Gentlemen—brethren I might say—of the bar of the State of Washington:

From Blackstone, we learned that when one decision overrules another it simply declares what always was the law from the beginning; that it does not make any new law, and that the people were always supposed to know that that had been the law from the beginning. In *Allen vs. Allen*, 30 Pac. (Col.) 215 and 216 the Court said that "Although the ablest Courts in the land find great difficulty in determining what the law is, every one is conclusively presumed to know the law." Beatty C. J., dissenting.

Whether that rule is applicable in the United States presents an interesting subject. In England they had one court of supreme authority, making the rule somewhat easier of application than it would be in the United States where we started with thirteen states and now have forty six, and, in addition to that, have a Federal Supreme Court whose rulings are supreme in a certain class of questions. Not only that, but these different state courts, in a way, concern all of us, since, while the states are sovereign, and separate jurisdictions, yet they are political divisions of one greater common country where people are doing business with each other across all state lines and bringing themselves in contact with the laws of the different states, and become interested in the courts and the decisions of the courts of all the states as if we were really citizens of each of those states. The difficulties, then, in this country resulting from overruled decisions are forty-seven times what they were in England, assuming that our courts only overrule the same ratio of decisions that are overruled in England. Therefore, this question is a very much more serious and practical question in this country than it could have been in England.

The constitutional limitations upon legislative action in this coun-

try, not found in England, have laid the foundation for the limitations being placed upon the Courts in this country.

Having provided in the Federal Constitution that no state legislature could pass an act impairing the obligation of a contract, it would necessarily educate the conscience, in the course of time, to believe that a contract made in reliance upon a decision of a court of last resort ought to secure some rights and should not be subject to be stricken down by an overruling decission. It early became a question in the Federal courts whether the contract impairment provision of the Constitution extends to decisions also as well as acts of the legislature.

This question seems first to have arisen in an indefinite way, in 1847, in a decision written by Chief Justice Taney in the case of *Rowan vs. Runnels*, 5 How. 134, where he declared that a contract that had been made in reliance upon a decision of the Supreme Court of the United States, construing statutory and constitutional provisions of the state of Mississippi, which the Supreme Court of Mississippi, when the question finally came before it, refused to follow, should be protected and enforced notwithstanding the subsequent decision of the Supreme Court of the state on a question which was a local question of construction of their constitution and statutes. The question came up again in the case of *Ohio Life Insurance & Trust Company vs. Debolt*, 16 How. 415, where the opinion was again rendered by Chief Justice Taney and his announcement, by reason of the former announcement which he had made, was a very full and clear, apparently with the satisfaction of the entire court—that the effect of an overruling decision upon a contract would be the same under the provisions of the Constitution as the effect of an act of the legislature and that the Constitution extended in its provisions equally to an overruling decision as it did to an act of a legislature imparing the obligation of contracts. After this announcement similar announcements continued to be made in decisions of the United States Supreme Court running along through a number of years, coming down to 1864 when the case of *Gelpcke vs. Dubuque*, 1 Wall. 175, went up from the United States Circuit Court in Iowa, and was decided January 11, 1864, after apparently very elaborate argument. The majority opinion was written by Justice Swayne. Justice Miller dissented in one of the most vigorous opinions he has written. The majority opinion sustained the announcement which had been made by Chief Justice Taney in the two preceding cases, and elaborated and confirmed the announcement. After that case the doctrine continued to be announced right along from time to time in the same way. *Havemeyer vs. Bd. Supvrs.*, 3 Wall. 295; *Mitchell vs. City of Burlington*, 4 Wall. 270; *County of Lee vs. Rodgers*, 7 Wall. 181; *City of Chicago vs. Sheldon*,

9 Wall. 50; *Olcott vs. Bd. Suprs.*, 16 Wall. 678; *Bd. Comrs vs. Thayer*, 4 Otto 631. In those different cases almost every member of the court wrote opinions from time to time, so that it received the approval, expressly, of substantially all of them,—Chief Justice Waite writing one, in the case of *Douglas vs. Pike County*, 101 U. S. 677, where he went extensively into the question again, and Justice Field wrote another, in the case of *Louisiana vs. Pilsbuty*, 105 U. S. 278, where he took an interest in elaborating the questions and stated it in strong and vigorous terms.

Strange as it would seem, this doctrine as to the protection extended by the provision of the Constitution to contracts made in reliance on decisions subsequently overruled, came up, nevertheless, later on and was absolutely overruled, but only to be revived again later. In the case of the *Central Land Company vs. Laidley*, in 159 U. S. 103, the doctrine is discussed again and a majority opinion written by Justice Gray distinguishing the prior cases, and Justice Field, who had written perhaps, the most recent of the opinions holding the other way, dissented. All prior cases had, as it so happened, gone up from the lower Federal courts to the United States Supreme Court, whereas this particular case was attempted to be brought up on error from a state supreme court which must involve a Federal question in order to entitle it to a hearing. While it was very strongly and clearly stated, from time to time, and repeatedly in the prior opinions, that they were based on Federal questions and that the overruling decision was an impairment of contract based on a prior decision within the meaning of the constitution, yet, in those same opinions, the question was also discussed on general principles of justice, and the court took advantage of that in the case of the *Central Land Company vs. Laidley*, to say that all those prior decisions were based upon principles of general law and not on a Federal question and that they did not involve, necessarily, a Federal question because they came up from a lower Federal court and did not necessitate a Federal question as to impairment of contract, but that in this case of *Central Land Company vs. Laidley*, the writ to a state supreme court could not be sustained, because there was no Federal question involved in the question of the rights of one who had made a contract in reliance upon a decision which was subsequently overruled.

After that announcement the decisions ran along in that line, and in many cases until the case of *City of Los Angeles vs. Los Angeles Water Company*, 177 U. S. 558; 20 Sup. Ct. Rep. 736. That was a case, however, that went up from a circuit court so that the real question could not be presented, strictly speaking, but in the opinion written by Justice MceKnna it is apparent from the language and the class of authorities cited that the mind of the Court was

changing upon the question; that, while the announcement there could not be any more than dictum, none of the Justices there seemed to care to take up the opposite side of the question, since the question was not really involved in the record.

This conception that the mind of the Court was changing is confirmed in the case of *Muhlker vs. New York & Harlem Railroad Company*, 197 U. S. 544. It was decided at the October term, 1904, and the writ of error was there sued out upon the ground that the decision of the Court of Appeals of New York overruling a prior decision violated the Fifth Amendment to the Constitution in that it impaired the obligations of a contract which a party had made relying upon an earlier decision of the Court of Appeals of New York. That case brought the question right before the Court again, and an opinion is there rendered of very great moment, the majority opinion being written by Justice McKenna, who had indicated five years before, that probably the Court's opinion was changing upon this question, and this majority opinion declared an entire change and sustained the writ of error from the Supreme Court of the State of New York. Justice Holmes wrote a dissenting opinion concurred in by the Chief Justice and Justices White and Peckham. Justice Holmes, in his dissenting opinion, states that not only had the majority opinion reversed a long line of decisions with reference to the impairment of contracts by subsequent judicial decisions, but that, in addition, they had gone much farther and declared that rights other than those *ex contractu* were entitled to protection from overruling decisions and would justify writs directed to the courts of last resort of the various states, not mentioning under what provision of the Constitution, but I presume under the due process provision of the Fourteenth amendment.

These two last cases may be more important in their collateral effect upon a question not expressly discussed than with reference to the questions expressly considered. They hold that a decision of a state court is a "law" within the meaning of the word in Sec. 10, Art. 1 Constitution though it has been uniformly held since *Swift vs. Tyson*, 16 Peters 1, that "law" as used in 34th Sec., Judiciary Act 1789, includes some but not all decisions of the courts. Justice Field's able dissent from this holding in *Swift vs. Tyson*, in *B. & O. R. R. vs. Baugh*, 149 U. S. 371; 13 Sup. Ct. Rep. 915, anticipated and supported in Hare on Constitutional Law, now derives support from the Mulker case.

This question came up again on another writ or error in *Sauer vs. City of New York*, 206 U. S. 536; 27 Sup. Ct. Rep. 686 from the same court, and while the writ was not sustained, yet in an opinion by Justice Moody, the doctrine of the Mulker case was clearly reaffirmed, indicating that the Court will sustain a writ of error sued out in a proper case of that kind.

That outlines the course of the Supreme Court briefly upon this question and we find that, for a great many years, according to its holding in *Central Land ompany vs. Laidley* and other cases the Supreme Court was protecting rights inhering in contract from the effect of overruling decisions, on general principles of law, not related to the provisions of the Constitution. That being the case, we have eminent authority in a long line of cases to the effect that an overruling decision is not, in all cases, a declaration of what the law always was. It is so, as to people who have not acquired rights in reliance upon the decision overruled, but as to people who have acquired rights in reliance upon a decision overruled, there is a long line of Federal authorities to the effect that they are entitled to protection. This establishes an exception to the rule declared in Blackstone. Some discussions, I notice, have proceeded upon the basis that the doctrine of protection against overruling decisions reverses the principals announced by Blackstone. Such is not wholly true, nor true at all, except as to persons who have acquired some vested right relying on the decision rendered. Whether protection will extend farther that rights inhering in contract is not clear in the authorities, but it would be hard to understand why one right would occupy a different position from any other in that regard. If a man were to build a structure in accordance with a decision of his highest court, and that structure was properly built, it would be hard to understand why he should not be entitled to as much protection in regard to negligent construction, as a party who had acquired some right, in reliance upon a decision inhering in contract. Justice Miller, in his dissenting opinion in the case of *Gelpcke vs. Dubuque*, maintains that very clearly and argued against the majority opinion because it extended the doctrine only to rights *ex contractu*, contending there was no reason or policy, why, if a right inherent in contract was entitled to protection, any other right should not be entitled to the same protection.

Going now, into the state courts, there are several where protection is given against overruling decisions, and these courts protect rights whether inhering in contract or not.

State vs. Comptoir Nat'l D'Escompte De Paris, 51 La. Ann. 1; 26 So. 91.

Vt. & Canada R. Co. vs. Vt. Cent. R. Co., 63 Vt. 1; 21 Atl. 262; 10 L. R. A. 562.

Farrier vs. N. E. Mtge. Sec. Co., 92 Ala. 176; 9 So. 532.

Jones vs. Woodstock Iron Co., 95 Ala. 551; 10 So. 635.

Haskett vs. Maxey, 134 Ind. 182; 33 N. E. 558.

Center School Twp. vs. B'd. School Com'rs., 150 Ind. 168; 49 N. E. 961.

Smith vs. County of Clark, 54 Mo. 58.

St. L. O. H. & C. Ry. Co. vs. Fowler, 142 Mo. 670; 44 S. W. 771.
Harmon vs. Auditor, 123 Ill. 122; 13 N. E. 161.
Whalley vs. Gallard, 21 S. Car. 560.
Yazoo & M. V. R. Co. vs. Adams, 81 Miss. 90; 32 So. 937.
Hall vs. Wells, 54 Miss. 289.
Bradley-Courrier Co. vs. Lall, 10 Misc. 366; 31 N. Y. Supp., 120.
Hill vs. Brown, 144 N. C. 177; 56 S. E. 693.
State vs. Bell, 136 N. C. 674; 49 S. E. 163.
George W. Sheppard, 2 Land Dec. 154.
9 Columbia Law Rev. 230.
22 Harvard Law Rev. 184.
38 Nat'l Corp. Reporter 862.

The Supreme Court of Indiana overruled a decision construing language in a will, as to whether it created a life estate or fee simple absolute, and they protected purchasers relying on the decision overruled. In Alabama they have applied it to the power of a married woman to execute a mortgage. In North Carolina they applied it to the right of defense in criminal cases declaring that a man had a right to defend according to decisions of the supreme court at the time the alleged crime was committed and that while the overruling decision would be applicable as to all crimes committed after the decision was made, it would not be applicable as to crimes committed intervening between its announcement and the announcement of the prior decision. I happen to know of an interesting application of this doctrine by the Attorney General of the United States in criminal cases from the section of the country from which I came. It became a question there whether the treaty with the Nez Perce Indians allowed the selling of liquor on that reservation. A case involving that went to the Court of Appeals of the Ninth Circuit and that court held that liquor could be sold there and, under that decision, a great many men took out licenses over that reservation and engaged in business pending the review of the case before the Supreme Court. It was a long time before the Supreme Court reversed the decision of the Court of Appeals, holding that there had been no right to sell liquor on the reservation at all. *Dick vs. U. S.*, 208 U. S. 340; 28 Cup. Ct. Rep. 399. After that decision of the Supreme Court the Attorney General instructed the United States attorney in Idaho not to prosecute the men who had taken out their licenses after the decision of the Court of Appeals, and who ceased business there after the announcement of the decision of the United States Supreme Court. This shows that the justice of this principle influences lawyers generally in their action.

City of Corvallis vs. Stock, 12 Ore. 391; 7 Pac. 524, protects a lawyer or, rather, his client in the procedure which the lawyer had taken

relying upon a decision which the court afterwards overruled, the procedure having been entered upon before the everruling of the decision. This question came up before the Court of Appeals of West Virginia in *Harbert vs. Monongahela River R. Co.*, 40 S. E. 377, and *Falconer vs. Simmons*, 41 S. E. 193, where though they refused to approve the Oregon case, yet they protected the lawyer by sustaining the procedure which he adopted although apparently disapproving it. They theoretically condemned but practically adopted the Oregon rule. This rule has been applied in questions of procedure and in questions of criminal law and in questions of property rights generally, as well as questions of contract. The overruling decisions in this country makes the question one of great moment.

There is quite a temptation for a state supreme court, since the doctrine is extended to them by the Federal court, to now adopt the principle as a general principle of law as against the decisions of the Federal Supreme Court. There is one decision, couched in some such sentiment as that, written by Chief Justice Ryan, of the Supreme Court of Wisconsin, in *Drake vs. Doyle*, 40 Wis. 175, where an individual had made a contract in reliance upon some decision of the United States Supreme Court which was afterwards overruled. Chief Justice Ryan referring to the case of *Gelpcke vs. Dubuque*, declared that if the doctrine which the Federal Supreme Court had been extending to overruling decisions of the state supreme courts was correct, it would certainly be very proper for the state supreme courts to extend the same protection to individuals who were suffering from overruling decisions of the Federal Supreme Court.

What the effect of the general adoption of these principles would be becomes an interesting question. It seems to me it would diminish litigation. The main objection to overruling erroneous decisions has been that it would unsettle titles. Would not the new rule afford an opportunity of correcting admitted errors in the law without danger? The application of the rule will cause increased interest in the publication of decisions and raise important questions as to the date they become effective—as to which some regulation might be necessary. It might tend toward brevity and the elimination of *dictum* from opinions.

There is another application of this doctrine. Even if a court should refuse to protect rights acquired under decision that is overruled, as a general proposition of law, the same court might not refuse to dismiss a case brought to attack those rights in a case exclusively of equitable cognizance. Especially might they refuse relief in a court of equity, to a litigant of a speculative character, one who acquired his rights for the purpose of litigation, after the overruling decision was rendered, with full knowledge that his antagonist

whom he attacks had made his investment or incurred his liabilities in reliance upon the overruled decision. A court of equity might well protect one who has acquired rights relying upon the overruled decision as against one who did not acquire his rights with which to attack him, until after this overruling decision was rendered. (See *State vs. Comptoir*, 51 La. Ann. 1, and *Vt. & Can. R. Co. vs. Vt. Cent. R. Co.*, 63 Vt. 1, supra).

I thank you, gentlemen. (Applause).

DUE PROCESS OF LAW IN CONNECTION WITH RAILROAD RATE LEGISLATION

HON. W. W. COTTON, Portland, Ore.

Mr. President and Gentlemen of the Association and the Ladies present:

I desire to say that I am a reformer without any notion of the kind of reform I desire to suggest. The fact is I do not know what the real remedy is for the difficulty which, it seems to me, exists at the present time in regard to the regulation of railroads and, at the same time, affording to them a fair hearing and a fair trial by some method which will amount to due process of law within the meaning of that provision in the Constitution of the United States, and it will be, therefore, necessary for me to explain somewhat the history of railroad regulation in this country, sketching but an outline upon that subject and giving you my notions most briefly.

At common law a railroad common carrier, as every other carrier, was entitled to make a reasonable charge for its services, peforming that service equally for all and without discrimination. What was a reasonable charge for the service rendered was at all times and is yet, in theory, a question which an ordinary court could hear and decide. In other words, it is a denial of due process of law to take away a common law right to make a reasonable charge and turn over the decision of that question to any set of persons other than a duly organized court. We all hold our lives, our liberty and our property subject to the mistakes of courts. Any man is liable to be hung tomorrow owing to some mistake of court and jury, but no man holds his property, no man holds his liberty or his life subject to the mistakes of anyone in undertaking to determine the rights in those respects except the mistakes of the ordinary courts. In other words, as our ancient friend, in the Massachusetts bill of rights, stated, "This is a government of laws, not men." But at the present time railroad companies, in the matter of the regulation of their facilities and in the matter of their rates, are not subject to any law, but are subject absolutely to the will of a number of railroad commissioners scattered throughout the country, including the Interstate Commerce Commission.

In 1872, or thereabouts, the states of Iowa, Illinois and Wisconsin

passed the first maximum rate laws. Those statutes were attempts to fix a maximum beyond which the railroads could not charge. The question came up in the Supreme Court of the United States in some cases which are reported in 94 U. S.,[1] and the Supreme Court held, by a divided court, that the question as to what was a reasonable rate to be charged by the common carrier was a question in regard to which the legislature itself might make a limit. Practically, however, an ordinary court cannot fix railroad rates. Any judgment between a railroad company and an ordinary individual undertaking to determine what is a reasonable rate bound him and the particular company only. It afforded no relief to the public, gave the public no redress and established no rule for the future. I think the decision of the majority of the court, like many other decisions of the Supreme Court, was a decision which was rendered as the result of the absolute necessity of the case. Following these laws in Iowa and Wisconsin, a large number of other statutes were enacted in the various states, and it so happened that most of these statutes were quite radical in their reductions, went into effect about the time that hard times came upon the country in the early '90's and most of the cases which arose under those statutes were presented to the court at a time when the earnings of the companies were comparatively small and, as a matter of fact, the limitations which the legislatures had undertaken to place upon railroad rates, accompanied by the light business which they were doing, had brought about the result that the property of railroads was practically confiscated. The Supreme Court, in a number of cases decided about that time, held that the power to limit did not give the legislature any right to confiscate.

Owing to the number of these rate laws which were set aside, and due, as we have all experienced, to the practical inability of the legislature to consider the question as to what was a fair maximum rate, it soon began to impress itself upon the minds of all thinking men that the legislative regulation of rates by the passage of maximum rate laws was ineffectual in its result and a violation of a right, and led, from the standpoint of the railroad, to serious distress. Consequently, there sprang up an era of railroad commissions, and the result is that at the present time there is a railroad commission in nearly every state of the Union and also a Federal commission. Practically all these commissions have power to fix rates, some of them to declare that a given rate is unreasonable and then go into court and undertake to enforce a rate which they may regard as reasonable; others having power to set aside an alleged unreason-

[1] *Chicago, Burlington & Quincy R. R. Co. v. Iowa*, 94 U. S. 155.
Munn v. Illinois, 94 U. S. 113.
Peik v. Chicago, etc., Railway Co., 94 U. S. 164.

able rate and they themselves declare what shall be a reasonable rate in the future, leaving the railroad company to undertake to set aside, by some form of court proceeding, the rate thus established. Having started on these lines with reference to rates, the matter of facilities have been taken in and recently, at your last session of the legislature, the powers of the railroad commission were very considerably enlarged so that, at the present time, they are able to control and regulate a large number of matters, incidental, some of them; others quite important.

In each case all that the legislature has done and indeed, all that it is able to do is to lay down the general rule, practically in the form of a declaration and, in most important cases, merely a declaration of what was and is the common law, namely, that all rates shall be just and reasonable and that all unjust discriminations are prohibited. The railroad commission is then allowed to go on and determine what is a reasonable rate. The question then presents itself to practically every one who has considered the subject, of the necessity of affording some kind of a court of review. That necessity arose from a decision which the Supreme Court of the United States rendered in 134 U. S.,[1] involving the Minnesota rate act, where they practically held that any attempt on the part of the legislature to turn over to a commission the final and absolute decision as to what was such reasonable rate, deprived the railroad company of its property without due process of law. The reasoning is comparatively simple and that was that the railroad company had a common law right to charge a reasonable rate; that that right was property; that that right had not been modified by any act of the legislature but, on the contrary, had been affirmed by the legislative declaration that all rates should be just and reasonable and that, therefore, the attempt of the legislature to substitute, as a finality, the decision of any commission in regard to this common law right, to take away the exercise of jurisdiction on the part of the courts over that same matter, was a denial of due process and substituted the will of the commission not a court for a decision of a court and allowed the mistakes of a commission to stand unreviewed, so, as the result of that decision, everyone has conceived the necessity of providing some system of court review.

As a matter of fact, most systems of court review which have been provided are absurdities and lead to absurd results from a practical standpoint. For example, in Nevada the system of court review provided there allows the railroad company to go into one of the lower courts and apply for an injunc-

[1] *Chicago, Milwaukee and St. Paul Ry. Co. v. Minnesota*, 134 U. S. 418. *Minneapolis Eastern Ry. Co. v. Minnesota*, 134 U. S. 467.

tion. At the same time, the statute provides that no court shall have power to grant any injunction except on the giving of a bond by the railroad company to pay penalties which would amount to about two thousand dollars for each individual shipment made under any given rate undertaken to be set aside and that no final order or decree shall be made by any court until after the matter has been passed upon by the Supreme Court. Practically the same system was adopted in the state of Minnesota and declared by the Supreme Court, in *ex parte* Young, 209 U. S., to be a denial of due process because the penalties were so great as to practically prevent the railroad company from seeking the remedy. Over in Oregon we have a statutory penalty which had to be covered by a bond that, when the lower court decided in your favor and there came an injunction, you would have to give bond, even on final hearing, that you would pay all fines and penalties that would be imposed against you. Down in Virginia they dodged the whole situation by undertaking to establish, by a constitutional act, a commission court mentioned in the constitution, having full legislative, executive and judicial powers over railroads, and they gave them power to establish such rates as they might deem just, provided for an appeal to the Supreme Court of Appeals of Virginia and provided that no other court should have any power to set aside any rate which this transportation court might establish. And, in that connection, I might say that the act on the part of Virginia, established by the constitution, is perfectly proper because it seems that there is no provision in the Constitution of the United States which prohibits any indivdual state from establishing a little domestic tyranny and conferring upon any officer executive, legislative and judicial power.

In our state, in common with a large number of others, we have a judicial review which, on its face, is fair, ample and sufficient, but, like all systems of that kind, it is practically ineffectual, and the reason why it is ineffectual is this: The ordinary court, coming to the examination of a rate matter or a matter concerning facilities or unjust discrimination, immediately starts out with the theory that three gentlemen who, shortly prior to their appointment, would not have known a rate if they had met it coming down the road, have, as the result of their appointment, acquired all wisdom upon that subject and, therefore, it is customary, in these opinions, to refer to the commission as a commission of experts who have given this matter exceedingly great and careful attention and that their decision, of course, while it is not binding upon us, nevertheless should be used as a guide to such an extent that we should follow it, and so we follow it. And, indeed, if the courts were inclined to enter upon an examination of this kind, neither their time nor their facilities or their oppor-

tunities are such as to enable them to make an examination sufficiently intelligent really to decide the question. The Interstate Commerce act went into effect about two years ago and the railroads have taken enougn cases into the Circuit Court of the United States for the Eighth circuit to keep one man busy, I think, for the next ten years to come. Practically every decision which the Interstate Commerce Commission has rendered is reviewable in the Eighth circuit. It so happens that the Northern Pacific, Union Pacific and most of the trans-continental roads leading out of Chicago have their headquarters in Omaha, St. Paul or St. Louis, and that brings to the Eighth circuit most of these cases. Our own Circuit Court of Appeals had a case presented to it a short time ago in the Willamette Valley case.[1] While the Interstate Commerce Commission in that case had undertaken by its opinion to present the question how far a court control can exist, made a finding that the rate set aside was a reasonably low rate but that the rate proposed by the commission was rendered necessary as the result of supposed water competition on lumber from Portland to Puget Sound and, therefore, that you may combine from points on the Willamette Valley to San Francisco for the purpose of meeting such water competition. They wrote an opinion for the express purpose of presenting the matter to the Circuit Court of Appeals in order to determine whether the Interstate Commerce Commission, in undertaking to fix a reasonable rate, could only mark the boundary between a reasonable and unreasonable, or whether they could take into consideration the special facts and circumstances of the case which might appeal to anyone who was acting as traffic manager or directing the traffic of that particular railroad. They intended to present the question. The Circuit Court of Appeals passed it by, taking the view that the only power of the courts to set aside one of these rates was on the ground that it amounted to the confiscation of property.[2]

Your own court here has had one or two rate matters, and practically all of them have been decided upon questions of law, not questions of fact. In fact, to my mind it seems a manifest absurdity to undertake to endow three or four men with the power of examining into rates and then having their action reviewed by a court having no greater opportunities to judge the matter than they did—in fact, not so great, because the witnesses who testified were not present before the court. We had an interesting case here a short time ago in this court,[3] in which we undertook to present a matter of denial of due process, which rule existed here in this state

[1] *Western Ore. Lumber, Mfg. Assn. v. S. P. Co.*, 14 I. C. C. Rep. 61.
[2] Not yet reported.
[3] *State ex rel. O. R. & N. Co. v. R. R. Com.*, 52 Wash. 17.

—although the Supreme Court says not—(laughter)—in that when the case is tried in this court of review, as to what is a reasonable rate, simply upon the testimony which was taken before the commission is a denial of due process. As a matter of fact, it has occurred to me, and I think such is the real fact, that the issues which are tried before the commission in undertaking to give them light upon the subject are very decidedly different and present themselves to a lawyer's mind in a very much different way than when the matter comes up before the court as to whether or not the rate is a reasonable one in and of itself. In other words, the matters on which you address the commission mainly are those questions of expansion, traffic situation, matters of that kind. In one sense it was upon the reasonableness of the rate, and in another sense not, and our court disposed of the matter by stating that no one had any interest in the old and ancient forms of procedure but that the legislature and courts had a perfect right to adopt any kind of procedure which the legislature might see fit.[1] That is an absolute denial of due process of law, because due process of law is a hearing according to the old and ancient forms and not to any such new form as the legislature may see fit to impose upon you. I have a few quotations upon that subject, and I have some others which I will read to you a little later.

Now, there ought to be, in these matters a full hearing, and that, to a very great extent as to matters of fact, should be a final hearing, and, as I said before, I think it is a mistake to undertake to try these questions out before one tribunal and then immediately turn around and have another tribunal sit in review upon these questions of fact. I do object, however, and I do claim and wish to present to you the proposition that a trial before these commissions upon these questions is not a good form of trial. I am not objecting to the treatment that I have received at the hands of any commission. I have no grievances. I have always been happy in conducting my practice, although mostly in an alien court and before what might be termed alien judges. I have always a feeling that any man, sitting in any position of dignity and authority where he was expected to render a decision, gave me the fairest deal that he was mentally capable of. But these commissions, in the first place, according to their organization, are investigators. In fact, I have listened here, and with a great deal of pleasure, to your discussion on that grievance committee and your troubles. I have listened with pleasure to the intense interest which you have manifested in seeing that every man had his rights and that the dignity and honor

[1] Ib. 31.

of the bar should be protected, and, therefore, investigation is the first step and, by these acts, the commissions are given power to investigate. Then, after they investigate, they file a complaint before themselves, practically prejudging the merits. After they then conclude, *prima facie*, that something is wrong and have instituted a complaint and examined a great many witnesses at the expense of the state, gradually get themselves around in a frame of mind so that it takes a great deal of evidence to overcome any such mental attitude. Then, after they have decided their own case, the railroad company has to commence suit against these very gentlemen as defendants. Now, I say that that process necessarily leads, not to irritation, although it does in some cases, but it leads to a mental attitude which prevents a man from being a fair judge in the most important matters which are now before the American people. A large number of these rate questions do not simply concern the revenues of the railroads involved, but many of them, in fact the most important one in the country, in this section particularly, affects the commercial supremacy of towns that are interested in the distribution of goods, namely—the Spokane rate case. The amount of money actually involved, of course, is of value, but yet the most important question involved in that case is the question whether the coast towns and Spokane are going to distribute goods to points in eastern Oregon and Washington. That one decision, without taking into consideration any question involving the growth and commercial supremacy of these towns, probably represents more in money, more in interest and more in real tangible value in every respect to the citizens of this state than practically all the questions which are presented to the Supreme Court ordinarily within a year, yet that class of questions are being tried, all over the United States, to men who, while, if they occupied a judicial position, many of them would be amply competent to fill it, yet who do not feel and who do not recognize that they occupy a position judicial, as judges.

I have never met a lawyer yet of any kind, character or description, but what, if you turned a case over to him to decide as judge, he would not give his best, most honest and careful attention to it and approach the matter with a dignity and solemnity which would befit him, for the time being, to occupy almost any ordinary judicial position, but the ordinary man, not being trained as a lawyer and not thinking of any of the responsibility resting upon him and feeling that his cases would be reviewed, in any event, by the court, occupies a position which is an anomalous one when he is expected to decide and finally dispose of questions of this sort. I therefore wish to call your attention to this matter in order that you may get interested in it,

because the commission idea is here to stay and it is a common practice, as manifested by the recent enactments of last year, to add to the powers of these commissions. For example, by statute, the question of the apportionment of the cost of installation and maintenance of interlocking appliances at crossings was turned over to a commission by the last session of the legislature, and the commission, under that statute, has power to apportion such cost, both of operation and maintenance, in such form and manner between the two roads as it may deem most equitable. Now, as a matter of fact, that question, I believe, has been twice before the Supreme Court, once in a case where they modified[1] the decision of the lower court that the cost of maintenance should be borne by the junior road, and a second time, where they held that the cost of installation of such plant was not a proper element of damages and a divided opinion of the court based upon the proposition as to whether or not the cost could be equitably apportioned by the court.[2] There is nothing stated in the statute, as I understand it, which says how this cost shall be apportioned or in what way it shall be disposed of, but lately, without any particular thought of the matter, which had been before the Supreme Court, upon which there is a good deal of law, upon which my friend, Judge Chadwick, has one view contrary to mine—at least he licked me on it, anyway—a matter of that kind is turned over to three gentlemen to deal with, to handle practically as a legislature and practically as judges.

Last winter there were a number of statutes enacted which gave power over numerous safety appliances, and electric headlights, and everything goes—the railroad commission to determine what the facilities shall be; in other words, to enact the statute and then judge of its enforcement afterwards. Now, it is a fundamental principle, manifested by a large number of decisions, that legislative, executive and judicial powers, according to the fundamental notions of our constitution, should be kept separate, yet, if you will read that statute carefully and bear in mind the power to decide liabilities, in accordance with present and past views, is a judicial question and the power to establish a new rule for the future is a legislative question, I think you will read that statute and reach the conclusion that, upon a large number of subjects, in fact practically every subject that the legislature has yet had brought to its attention, the railroad commission of this state exercises practically legislative and judicial power. In other words, we go before them today for the purpose of determining what is a reasonable facility. They have absolutely no standard

[1] *State ex rel. North Coast R. v. N. P. R. Co.*, 49 Wash. 78.
[2] *Chicago, etc.. R. Co. v. T. R. & P. Co.*, 53 Wash. 682.

to guide them and if they make up their minds as to the kind of facility we should put in, then they legislate it in and adjudge that we must put it in.

Now, the first thing that should be done, according to my notion, is to be careful about the conferring of new and increased powers upon the commission. In other words, it does not seem to me quite right that they should have turned over to them the full exercise of the legislative power of the state of Washington, and that is practically what is being done in a great many cases. President Taft has had his attention called to this subject, and I think the time is getting ripe, and that a transportation court will be established which will decide transportation matters, including rate matters, conferring the other powers of investigation and statistics to a board or bureau which will exercise the executive functions of the commission and that the legislative functions shall be held in reserve, as it should be, by the full legislature. Now it is tyranny, practically, and everybody has said so—in fact, I have quotations here, which I wont stop to read, starting from Aristotle down to William Jennings Bryan—

A Voice: Which do you consider the best authority?

Mr. Cotton: As a matter of fact, I think Mr. Bryan is the best authority. I am going to read you just exactly what he says, and it is not only good sense, but it appeals to me as a practical proposition: "A man must be more than human to combine within himself the deliberation of a legislator, the zeal of a prosecutor and the impartiality of a judge." That is absolutely true. And that is just exactly what most of these railroad commissions are undertaking to do at the present time; the zeal of a prosecutor, the impartiality of a judge and the exercise of jurisdiction on their part by legislating a jurisdiction unto themselves.

Now, the due process of law feature arises from the fact that the use of property is property, that the right to make a charge for property is property, and when this matter was presented to the Supreme Court of the United tSates in this decision in 134 U. S., a very interesting case was presented whereby rights were involved but comparatively a very small amount of money was involved. The decision of the Supreme Court of Minnesota was that the decision of the commission was final and could not be set aside, that the power to regulate rates, if it existed at all, was legislative. In disposing of these questions, Mr. Justice Blatchford said:

"There being, therefore, no contract or chartered right in the railroad company which can prevent the legislature from regulating, in some form, the charges of the company for transportation, the question is whether the form adopted in the present case is valid. The con-

struction put upon the statute by the supreme court of Minnesota must be accepted by this court, for the purposes of the present case, as conclusive and not to be re-examined here as to its propriety or accuracy. The Supreme Court authoritatively declares that it is the expressed intention of the legislature of Minnesota, by the statute, that the rates recommended and published by the commission, if it proceeds in the manner pointed out by the act, are not simply advisory, nor merely *prima facie* equal and reasonable, but final and conclusive as to what are equal and reasonable charges; that the law neither contemplates nor allows any issue to be made or inquiry to be had as to their equality or reasonableness in fact; that, under the statute, the rates published by the commission are the only ones that are lawful, and, therefore, in contemplation of the law, the only ones that are equal and reasonable; and that, in a proceeding for mandamus under the statute, there is no fact to traverse except the violation of law in not complying with the recommendations of the commission. In other words, although the railroad company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the hands of the commission if it chooses to establish rates that are unequal and unreasonable. This being the construction of the statute by which we are bound in considering the present case, we are of the opinion that, so construed, it conflicts with the constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice. * * * *

"By the second section of the statute in question it is provided that all charges made by a common carrier for the transportation of passengers or property shall be equal and reasonable. Under this provision, the carrier has a right to make equal and reasonable charges for such transportation. In the present case, the return alleged that the rate of charge fixed by the commission was not equal or reasonable, and the Supreme Court held that the statute deprived the company of the right to show that judicially. The question of the reasonableness of a rate of charge for transportation by a railroad company, involving, as it does, the element of reasonableness both as regards the company and as regards the public is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the constitution of the United States; and, in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."[1]

[1]134 U. S. 456.

Now, in that case, there was absolutely no question presented as to the matter of confiscation and the decision turned entirely upon the question of due process.

"Due process" has been several times defined. For example, Justice Story's definition is:

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one being dealt with belongs."

Mr. Justice Cooley, in Constitutional Limitations, 7 ed. p. 504, said:

"While every man has a right to require that his own controversies shall be judged by the same rules which are applied in the controversies of his neighbors, the whole community is also entitled, at all times, to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be under a rule impartial in its operation. It is not the partial nature of the rule, so much as its arbitrary and unusual character, which condemns it as unknown to the law of the land."

The procedure in Washington undertaking to review a decision of a commission is absolutely "unknown to the law of the land" as applied to the rights, common law or statutory, of any other citizen of the state of Washington. Under the Washington commission law the case is heard in the reveiewing court upon the same evidence introduced before the commission. In the case of *State vs. Railroad Commission*, 52 Wash. 17, the railroad company took the position that it was entitled to introduce new and different evidence at the court hearing, and that a denial of the right to introduce new evidence deprived the company of its property without due process. In disposing of this question the court said:

"It is true that the forms of law and procedure under which this commission is acting are not, in all respects, like the forms and procedure governing other courts, and, in the language of many of the cases cited by counsel for the appellant and repeated by the appellants themselves in their arguments, in some respects 'it is not a proceeding under the forms and with the machinery provided by the wisdom of successive ages.' But it occurs to us that it makes no difference whether it is proceeding under the forms and with the machinery provided by the wisdom of successive ages, or whether it is under the powers and proceedings provided by this age."

Whenever a statute creates a new form of procedure which will apply to one class of people alone, the old and ancient forme applying to all others, such a statute is an absolute denial of due process of law to that particular class to whose rights the new procedure applies. The court further says:

"Law is a progressive science, and must necessarily regard the changing conditions of society and of the business of the coun-

try, and the legislatures and courts of today ought certainly to be as well qualified to provide machinery for the guidance of a commission as was the law-making power two hundred years ago. The essential idea does not take cognizance of the antiquity of the power and machinery under which the commission is acting, but of the question whether, under such powers and the working of such machinery, the respective legal rights of the carriers and the people are preserved."

With that last sentence I entirely agree. That is the essential thing, but I do not think we simply give that essential thing in a form of new procedure peculiar to itself, which provides and prevents the introduction of evidence in a court of justice, all the evidence which you can bring on the subject, constitutes due process, and I, therefore, necessarily have to dissent from the opinion of the court as a legal matter. Looking at the matter from a practical standpoint, I am of the opinion that the court is right for the reason that it is practically impossible for an ordinary court to devote the necessary time to try out the questions of fact presented to the commission. Nevertheless the questions of fact should be decided by some court. The questions are here. They have to be decided by o court or commission. A committee in the legislature or appearing for the legislature is insufficient. Legislation has always been haphazard and always will be, but it does seem to me that due process at least means the organization of a court, the organization of men who will occupy a judicial position, who will approach these matters with absolute judicial fairness, cut off entirely from the feelings of prosecutors, any feeling of pride which we all have to sustain our own opinions, and who will occupy the position of real judges. Let us, then, have, on the other side, a commission who mingle with the people, who will go out, if necessary, and ascertain their wants and act as investigators of all facilities of the railroads from one end to the other, but let us have, some time or otner in this country, a transportation court. I myself am firmly of the belief that, at a comparatively early date, the constitution of the United States will have to be amended in order to give the control to special courts of both state and inter-state traffic. This thing of undertaking to regulate by state commission state traffics and then having a gentleman, like myself, come in and wiggle out of the regulations because the commission is regulating inter-state traffic at the same time, does not seem to me to accomplish any real useful purpose etiher so far as the railroads or the people are concerned. I have had two interesting cases on that subject and have wiggled out both times to my own satisfaction, but I do not see any use in it at all, but there should be, I think, a supreme court of transportation in the United States, occupying a position as a court, supported by district courts

of transportation exercising control both over state and inter-state traffic and hearing and deciding cases locally.

Now, I have not made a very philosophical address. I have not any real remedy to suggest, but I wish to get you interested. The laws are made, largely, by the thinking lawyers of a community. Railroading ought to be just as legitimate a business as any other business in the United States, and I would like to have you read these commission acts, bearing in mind the distinction between leg'slative, judicial and executive acts, with the idea and notion of seeing whether practically all the powers of the state, subject only to this of judicial review, which I concede cannot be conveniently exercised and which, except upon matters of law, the courts generally of the state ought not to be burdened with, and yet, according to my notion, as long as the present system exists, they should assume the burden of examining these cases as questions of fact, and, as the years go on, see whether we cannot work out to a system whereby the essential feature, as referred to in the quotation which I have made from the Supreme Court, cannot be preserved, viz: "the respective legal rights of the carriers and the people." It is an important question. It is the most important question I know of now before the American people. It ought not to be a question upon which there should be any real friction, and it ought not to be a question upon which there should be any real annoyance. The railroads owe a duty to the people and the people, and particularly the thinking lawyers of the country, owe a duty to the railroads. They are here. They are our greatest benefactors, in many respects, and they should be regulated, but it seems to me they should be regulated fairly, in the sense that their cases should be heard by a body of men who would give to their study and decision the same knowledge, diligence and intelligence they are giving, in the ordinary courts of our states, to commercial questions generally.

I would the decisions of those men, like the decisions of trial courts generally, should be final, practically, upon all questions of fact and treated so by the Supreme Court, the Supreme Court only acting upon matters of law, and that gradually these transportation courts should begin to lay down some kind of principle that some poor, benighted railroad man might follow. If anybody can tell what will be a reasonable rate tomorrow or what rule or principle any one of these commissioners will apply in determining what is a reasonable rate, it is entirely beyond me, and yet the statute makes these railroad companies punishable with heavy fines and penalties for failure to charge reasonable rates. Now, what is a reasonable rate absolutely depends in this state, in the United States and in practically every state in the Union, upon the whim, caprice and the kind of breakfast that the

gentlemen in control may have had on that particular morning, and, beyond that, if you can find any rule to guide you, I know not of it. But I do feel that by a little care and by the organization of the courts upon proper principles, you will begin to build up a system which will be a part of a solid foundation, that men will know what their rights are and will gradually work out, with reference to transportation matters, rules and regulations which some one will know in advance in determining these questions. I hope that you will be interested. When I see the interest which you have manifested in other matters concerning procedure and remedial rights, and disbarments, I know that you appreciate the importance of this matter to yourselves, to the railroads and to the general good feeling of the country. Why, to my mind, there will, by the proper handling of the subject by railroads, with a half-ways decent fairness on their part and on the part of the people—in fact, I don't say it out loud, but I think the people are just about as fair as the railroads; that has always been my feeling in regard to the matter—that with a little halfway decent procedure, with a court of sufficient dignity and character so that its decisions will go out and be regarded by the people as the decisions of men who have given their careful and earnest attention and who have decided honestly and fairly without any compromise and just exactly as they thought right, why, the day would soon come in this country when the necessity of rendering such decisions would be almost entirely gone. But the present system is wrong and irritating, and it cannot help but lead to a whole lot of unnecessary litigation, with row and wrangling, with headlines in the newspapers upon a plain, ordinary matter of legitimate business, affecting every man in the United States.

I most sincerely hope that I have at least interested you in this matter and that you will look at the subject, read these statutes and avoid unnecessarily conferring judicial, legislative and executive powers upon these commissions, and strive, as the time goes on, to establish true transportation courts composed of men who would occupy the positions with dignity and who would possess the character of judges.

I am much obliged to you for your attention. (Applause).

COURTS OF CANADA

ROBERT CASSIDY, K. C., Vancouver, B. C.

Mr. President and Gentlemen of the Bar Association of the State of Washington:

It is with very great pleasure that I come before you this evening. You must not think that I was selected to come down here on account of my peculiar eminence at the bar of British Columbia. The truth of the matter is that I came down here because I think that my brethern of British Columbia thought that I was one of those who would like to come. They were right. I liked to come very much and I am please dI am here. I am not going to trouble you with any learned discussion, to go critically into any points of difference between our courts and your own. It will be enough for me to give you an informal chat and gratify the natural curiosity we all have in regard to the affairs of our neighbors.

There are some differences in principle between the notion of the administration of law and the source of law and of power between the United States and our country, as you know. In a constitutional sense, our constitution is the converse of yours. You know, of course, that in Canada the powerful body in the state is the Central or Federal power. All the residuum of powers are there. The contrary of course is the case in regard to the States. The States gave up to the central authority only that part of the power which they thought was neceseary for the management of the central or federal concerns, keeping everything else. The converse was the case with us. It is somewhat similar with regard to the source of power and with reference to the administration of power. You, as it were, come up from below—the citizen, the state, the administrator of law. With us, even now, not only as a matter of sentiment but in reality, as a matter of fact, all the source and origin of power, existing at this moment in courts of general jurisdiction, we are supposed to and do immediately take from the power of the King. The writs still run in the name of the King. In speaking of the courts of Canada, it is necessary almost to begin at the top instead of beginning at the bottom, as you would do. You think of your courts as the trial court, the appellate court, the supreme court. With us the King is always supposed to be sitting in Court and he is supposed to be administering justice himself upon the advice of his judges. We do not need any law in Canada by statute to give

us the source of power in our courts of general jurisdiction. The King also in his Privy Council is the ultimatum court of appeal which decides causes between citizens in the Province of British Columbia and all over Canada. Curiously enough, there is a statute in the Dominion of Canada, the Act constituting the Supreme Court of Canada, which says that a decision of the Supreme Court of Canada shall be final in all cases whatsoever. Notwithstanding that, it has been determined by the Privy Council, and all other courts, of course are concluded thereby, that those words do not take away the prerogative right of the King as an ultimate Court, and so we have appeals going up to the Privy Council.

Now I tell you this because it is interesting, perhaps, to your minds as being a relic of what you would suppose belonged to the Dark Ages. I myself have, upon occasion, been in that Court, the Privy Council, in cases going from British Columbia. It is not the House of Lords. It is the Judicial Committee of the Privy Council, and it sits in the most informal way in Downing Street. A great many of you, of course, have been over to London and you know the old street close to the Houses of Parliment and near Westminster Abbey. You go there into a room something half the size of this and there are a number of very nice looking old gentlemen who come to town and sit on either side of a long table, in their ordinary every day clothes in which they come off the street, and they are being addressed in an ordinary conversational way, asking questions and so on, by the most eminent council in England and her colonies, who come there for the discussion of cases. Mr. Edward Blake, of whom you have all heard, who was Minister of Justice of Canada, was one of the most eminent men who appeared there, and Mr. Christopher Robinson, who recently died, and I have been before them, I may say, on one or two occasions myself.

We come then to the Supreme Court of Canada. The Supreme Court of Canada is a court somewhat similar to your Federal Court or Supreme Court of the United States, with the exception that it is not confined to Federal questions as is your Supreme Court of the United States. It has appellate jurisdiction over the highest courts of the provinces of Canada. The minor courts have original jurisdiction, such small courts as County Courts and so on. The Supreme Court of Canada is constituted by a Dominion Statute. It is very much more formal in its mode of conducting business than is the Privy Council. The Judges all wear elaborate robes of purple and ermine. The lawyers also there are gowned. I do not know whether you gentlemen wear gowns or not down here. In British Columbia of course we do. Then there are other courts. In Quebec, the French law, as you all

know, is invoked. By the original act of 1791, the Quebec Act, the laws of Quebec were preserved to them and to this day they have the French law, or Code Civile. They have their own practice and their own courts. It seems to me that it is an extraordinary instance of the broad minded manner in which the local sentiments of peoples brought within the British Empire, have been given effect under the British Flag. Coming closer home, in British Columbia, we have a Supreme Court of five judges and we are just entering upon a discussion of the question of an appellate court. Some slight political difficulties have prevented us so far from having that court.

A peculiarity of our system is that our judges of our higher Provincial Courts are nominally appointed by the Crown, but they are appointed by the Crown on the advice of the Federal authorities. That is to say the whole of our judiciary of the higher Provincial Courts throughout Canada is appointed from Ottawa. This plan works very well in practice, because the local prejudices, the local feeling, the political sentiments and so on, which must naturally collect around anything in the nature of a public appointment, are removed to a distance. We get our appointments from Ottawa. However, under the British North America Act the creation of the court is in the Provincial authority, and the court will be created by local authority or not, as it thinks proper, although the appointment of the Judges of that court is in the Federal authority, and, while in British Columbia, at the present moment, we are in need of a Court of Appeal, and the Federal authorities have announced that they are ready to give us judges for such a court, who are paid out of Federal Revenue, the Provincial Government have not yet proclaimed the act constituting such a court.

In our courts we have long got away from the old separation between law and equity in practice. That is to say, nowadays, we issue a writ and proceed, no matter what the class of remedy may be, before the court without any differences of procedure whatever. The old bills of complaint, which we used to have before the adoption of the Judicature Act, have been swept away. I understand the same is the case in your courts with the exception, I believe, of certain proceedings in your Federal Courts. There are a great many features which we admire in the courts of the United States. I myself have seen proceedings in your courts, both on trials and once or twice in appeals. In trials, I think the mode by which you in this State obtain from the Court directions to a jury the counsel on each side putting the points which he wishes to have put before the jury by the Court is a better method than the one adopted by us, which arises from the supposition that the Court is supposed to know all the law and that you are not supposed to have the impertinence to tell the Court in advance what

it ought to say upon any point, but that you ought to keep silent upon it, leaving it entirely to the Court to charge the jury, both upon the facts and upon the law, as it thinks proper. I myself think, since we all know that, as a matter of fact, it is almost impossible for any man, off hand, to bring the amount of legal learning which is adequate to the decision of an important question which one has not looked up, that it is a very great advantage to have a practice such as I have indicated.

Now there is a very marked difference between our mode and yours in regard to criminal trials. The method which has been adopted by our courts is that the utmost confidence can be placed in the ordinary juryman which you take off the street, and that the utmost confidence can be placed in the Judge. I have sometimes been surprised in reading the American newspapers and observing your courts, to note the difficulty which is found with you in getting a jury. The principle of interrogating a juryman as to his bias and son on, we have not adopted. At the same time, on that point, I think, that, in practice we have found that to give entire confidence to any man who comes into the box as a juryman, subject to a right to challenge withont giving any reason a certain small proportion, appears to work very well. In twenty five years experience I have never known or heard of a challenge for cause though the right exists, and I do not know whether it is that the machinery which you have adopted appears necessary to you, but it has often suggested itself to me that, after all, the mode which we adopt of leaving the administration of justice unreservedly and with confidence in the hands of our citizens without circumstances of suspicion or distrust, works exceedingly well in practice and that, while, of course, the Courts in the United States are entitled to take their own view of that, yet at the same time we get verdicts when, perhaps, if we selected the jury in the other way, we might not be able to do so. We also leave the Judge absolutely untrammeled to give his view of the facts as well as rulings in law to the jury and we find that while the juries are often assisted by the Judges upon the facts they by no means lose their independence.

Now, gentlemen, I am not going to detain you any longer. I can only say that I am very glad indeed to have had the pleasure of addressing you and I hope that when you are in Bellingham next year, as I know you will be from the comments in the papers, that you will have the opportunity of hearing Mr. Bodwell or Mr. Davis or one of the men who are more accustomed than myself to addressing bodies like this and who are very much more eminent in the forensic arena than myself.

Thanking you for your attention.

IN MEMORIAM

THOMAS JEFFERSON ANDERS

Appropriate and eloquent eulogistic addresses were made by Hon. R. F. Sturdevant and Hon. John L. Sharpstein.

Born, April 4, 1838, Bloomville, Ohio.

Graduated Law Department University of Michigan 1861.

Taught school and practiced law in Wisconsin two years.

Moved to Montana Territory 1864.

Came to Washington Territory November, 1871.

Married Miss Viola Hull, Walla Walla, Dec. 10, 1873.

City attorney of Walla Walla.

Was elected five years in succession as Territorial District Attorney, from 1879 to statehood.

First Chief Justice of state.

Served on Supreme Court bench from 1889 to 1904.

Died June 19, 1909.

SAMUEL GOODLOVE COSGROVE

A feeling tribute was prepared by Mr. Justice Gose and read by Mr. Justice Chadwick.

Born in Ohio, April 10, 1847.

Fought in the Union ranks in Civil war.

Graduated Ohio Wesleyan University 1873.

Admitted to bar in Ohio 1875.

Married Miss Zephorena Edgerton, Cleveland, Ohio, June 25, 1878.

Came to Washington, locating at Pomeroy, 1883.

Member of Constitutional Convention.

Commander of G. A. R. of Washington and Alaska 1889-90.

Junior Vice Commander in Chief National G. A. R.

Mayor of Pomeroy for five terms in succession; declined another term.

Elected Governor of Washington November, 1908.

Died March 28, 1909.

FRANCES WELLINGTON CUSHMAN

Touching tributes were paid by Hon. Geo. T. Reid and Mr. Henry W. Lueders.

Born Brighton, Iowa, May 8, 1867.

Graduated Pleasant Plain (Ia.) Academy 1884.

Worked as section hand and cowboy in Wyoming for five years, studying law.

Admitted to bar in Nebraska 1888, when 21 years of age.

Came to Washington 1891.

Elected to Congress 1898 and re-elected at each succeeding election to the time of his death, receiving usually the highest popular vote.

Married Miss May Pringle, Grinnell, Iowa, 1899.

Died in New York City July 6, 1909.

OLIVER VINTON LINN

Eulogy by Mr. P. M. Troy.

Born Greenville, Pa., November 9, 1857.

Educated at West Minster College, Wilmington, Pa.

Admitted to bar at Mercer, Pa., 1882.

Married Miss Margaret A. Taggart, of East Palestine, O., November 14, 1883.

Came to Washington January, 1889.

Located in Olympia 1891.

Elected Superior Judge for Thurston County 1898, and held the office continually until time of death.

Died December 6, 1908.

CHARLES SUMNER FOGG

Eulogy by Hon. W. H. Snell, Tacoma.

Born Stetson, Me., October 1, 1851.

Student East Maine Conference Seminary.

Settled in Iowa 1870.

Attended Iowa State University Law School.

Admitted to the bar November 28, 1871.

Married Miss Lelia I. Seydel August 20, 1873.

Came to Washington in 1889, locating in Tacoma.

Was in active and extensive practice until retirement, March, 1903.

Died September 26, 1907.

ALEXANDER GORDON AVERY

Eulogy by Hon. B. S. Grosscup, Tacoma.

Born Sacramento, Cal., December 9, 1870.

Attended Pacific Beach College, San Diego, Cal.

Located in Tacoma 1889.

Assistant Division Counsel N. P. R. R., Western Division, 1900-1908.

Married Miss Catherine Lee Harney, 1896.

Died August 5, 1908.

VICTOR EDWIN PALMER

Eulogy by Mr. Justice Morris.

Born, Wisconsin, 1871.

Graduated Ripon College 1897.

LL. B., Columbia University 1899.

Married Miss Carrie W. Denison, of Hartford, Wis., 1905.

Published Corporate By-Laws 1904; Lien Laws 1905.

Lecturer University of Washington Law School one year.

Died October 16, 1908.

PAPERS READ

Year.	Writer.	Subject.
1894...	John Arthur.....	President's Address—"Lawyers in Their Relations With the State."
" ...	R. A. Ballinger.....	"Our Community Property Laws."
" ...	Frank H. Graves.....	"Non-Partisan Selection of the Judiciary."
" ...	Thomas Carroll.....	"Policy of Redemption Laws."
" ...	John W. Pratt.....	"Government of Cities."
" ...	Charles S. Fogg.....	"Evils of the Promiscuous Appointment of Receivers."
" ...	James B. Reavis.....	"Our Exemption Laws."
" ...	Frank T. Post.....	"The Material Man's Lien."
" ...	Orange Jacobs.....	"Reminiscences of the Bench and Bar of Washington."
1895...	George M. Forster....	President's Address.
" ...	George Turner.....	"Practice and Procedure in the State of Washington."
" ...	Charles O. Bates.....	"Juries and Jury Trials."
" ...	David E. Baily.....	"Stare Decisis."
" ...	C. H. Hanford.....	"Jurisdiction of American Courts, State and Federal."
" ...	John J. McGilvra.....	"The Pioneer Judges and Lawyers of Washington."
1896...	Charles S. Fogg.....	President's Address—"The Law and Lawyer in History."
" ...	T. N. Allen.....	"Judicial Legislation."
" ...	N. T. Caton.....	"Pioneer Judges and Lawyers."
" ...	Emmett N. Parker....	"Probate Law and Practice in Washington."
" ...	George Donworth.....	"Corporations."
" ...	R. S. Holt.....	"Contributory Negligence."
" ...	James Z. Moore.....	"Landlord and Tenant."
" ...	Alfred Battle.....	"Record Notice and Curative Acts."
" ...	W. T. Dovell.....	"Bench and Bar."
1897...	Harold Preston.....	President's Address
" ...	E. B. Leaming.....	"Philosophy of the Law."
" ...	W. H. Pritchard.....	"The Policy and Practical Effect of Usury Laws."

Year.	Writer.	Subject.
1897...	Ben Sheeks.....	"Some Judicial Opinions—A Study."
" ...	Austin Mires.....	"Irrigation and Water Rights in the State of Washington."
" ...	John P. Hoyt.....	"Reminiscences of the Bench and Bar of Washington."
1898...	George Turner.....	President's Address.
" ...	W. C. Sharpstein.....	"Annexation of Foreign Territory; Its Constitutionality and Expediency."
" ...	F. H. Brownell.....	"Mining Laws in Washington."
" ...	James Wickersham...	"The Constitution of China—A Study in Primitive Law."
" ...	Henry M. Hoyt.....	"The Legal Effects of Mortgages and Pledges of Rents and Profits of Real Estate."
" ...	Frederick Bausman..	"Public Policy as an Element of Judicial Construction."
1899...	Theodore L. Stiles....	President's Address — "Legislative Encroachments Upon Private Rights."
" ...	James G. McClinton..	"Reform in Criminal Procedure."
" ...	Byron Millett.....	"Fourteenth Amendment to the United States Constitution."
" ...	George H. Walker....	"What Shall Be Done About the Trusts?"
" ...	E. F. Blaine.....	"Decennial of Our State Constitution."
" ...	Samuel R. Stern.....	"The Law and the Laborer."
1900...	George Donworth.....	President's Address—"The Passing of Precedent."
" ...	Will H. Thompson....	"The Status of Our Newly-Acquired Territory."
" ...	Herbert S. Griggs....	"Admiralty Practice."
" ...	Charles E. Shepard...	"Limitations on Municipal Indebtedness."
" ...	C. W. Hodgdon.....	'Government Ownership of Railroads."
" ...	J. B. Davidson.....	"Needed Reforms in the Laws of Marriage and Divorce."
" ...	Thomas B. Hardin....	"How Should United States Senators Be Elected?"
1901...	Samuel R. Stern.....	President's Address.
" ...	A. G. Kellam.....	"The Trust Fund Theory of Corporation Assets."
" ...	T. O. Abbott.....	"Advantages of the Torrens System of Conveyancing."
" ...	E. G. Kreider.....	"Law Reporting."

Year.	Writer.	Subject.
"	...Joseph Shippen.....	"The Insular Questions and Their Solution by the Supreme Court of the United States."
1902...	Austin Mires.....	President's Address.
"	...Edward Whitson.....	"The Course of Legislation in Washington."
"	...Will G. Graves.....	"Stability of Legal Principles—A Thing of the Past."
"	...Arthur Remington...	"Railway and Transportation Commissions."
"	...C. H. Hanford.....	"Conflicting Decisions of Federal and State Courts."
"	...Orange Jacobs.....	"Reminiscences of Bench and Bar."
"	...Edward Pruyn.....	Poem—"A Day In Court."
1903...	R. G. Hudson.....	President's Address—"Trusts."
"	...F. D. Nash.....	"Street Assessments."
"	...N. T. Caton.....	"Some Pioneer Judges and Lawyers I Have Known."
"	...L. Frank Brown.....	"The Use and Abuse of the Labor Union."
"	...Thomas Burke.....	"The Life and Character of John B. Allen."
"	...John T. Condon.....	"A Theory of Legal Obligation."
"	...James B. Reavis.....	"Taxation of Franchises."
1904...	W. A. Peters.....	President's Address.
"	...Carrol B. Graves.....	"The Desirability of Harmonizing State and Federal Statutes on Irrigation."
"	...E. C. Macdonald.....	"Relief of Our State and Federal Courts."
"	...Alfred Battle.....	For Affirmative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
"	...Theo. L. Stiles.....	For Negative of, "Should the State Permit Corporations to Own and Vote Stock in Other Corporations?"
1905...	Edward Whitson.....	President's Address.
"	...S. M. Bruce.....	"The Jury System."
"	...Harvey L. Johnson...	"The Development of the Law of Labor and Labor Organizations."
"	...Geo. Ladd Munn.....	"The Community Property Law and Non-Residents."
"	...C. C. Gose.....	"Is the Provision of Our State Constitution Relative to Private Ways of Necessity in Conflict With the Fourteenth Amendment?"

Year.	Writer.	Subject.
1906...	Francis H. Brownell..	President's Address.
" ...	Frank H. Rudkin....	"The Court's Work."
" ...	Geo. E. Wright.....	"Some Questions of Real Estate Law."
" ...	Henry McLean.....	"The Evolution of State Legislative Methods."
" ...	James M. Ashton.....	"Maritime Law."
" ...	J. B. Bridges.....	"Log Booms on Navigable Rivers."
1907...	E. C. Hughes.....	President's Address.
" ...	James R. Garfield, Secretary of Interior....	"The Commerce Clause of the Constitution."
" ...	H. E. Hadley.....	"The Lawyer Under Fire."
" ...	F. T. Post.....	"Our Community Property Law."
" ...	W. H. Abel.....	"Navigable Waters."
" ...	H. G. Rowland.....	"Tide Lands."
" ...	James F. Ailshie, Chief Justice of Idaho.....	"The Lawyer as a Conservative."
" ...	Dr. Elmer E. Heg....	"Our Sanitary Laws."
" ...	Chas. W. Fairbanks, Vice-President United States	"The Lawyer."
1908...	A. G. Avery.....	President's Address.
1909...	J. B. Bridges.....	President's Address.
" ...	James E. Babb, Lewiston, Idaho.....	"Effect of Overruling Opinion of Court of Last Resort on Rights Acquired on Opinion Overruled."
" ...	W. W. Cotton, Portland, Ore.....	"Due Process of Law in Connection With Railroad Rate Legislation."
" ...	Robert Cassidy, K. C., Vancouver, B. C.....	"Courts of Canada."

CONSTITUTION

(Adopted July 29, 1909.)

ARTICLE I.

NAME.

This association shall be known as the Washington State Bar Association.

ARTICLE II.

OBJECTS.

SECTION 1. This Association is formed to advance the science of jurisprudence; to promote the administration of justice; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the profession of law; and to cultivate and encourage cordial intercourse among the lawyers of the state of Washington.

SEC. 2. It shall not take any partisan political action, nor endorse or recommend any person for official position.

ARTICLE III.

MEMBERS.

SECTION 1. All members of the Association in good standing, as now shown on its membership roll, shall be members of this Association.

SEC. 2. Any member of the bar of the Supreme or Superior courts of the state of Washington residing and practicing in this state, and any state or Federal judge residing in this state, who shall comply with the requirements hereinafter set forth, may become an active member of the Association.

SEC. 3. All applications for membership must be in writing, signed by the applicant, stating his name, age, residence and date of admission to practice in the Supreme or Superior court, or commission to the bench; endorsed by three or more members of the Association, and must be accompanied by the usual admission fee.

SEC. 4 A list of applications approved by the committee on membership during the interim of the meetings of the Association, shall be reported at each annual meeting, and such persons so approved shall then be deemed admitted as members of the Association, unless a vote upon them or any of them is demanded, in which case a ballot

shall be had upon such person or persons, and such person or persons shall be deemed rejected unless four-fifths of the members present and voting shall vote in favor of his or their admission.

SEC. 5. Rejected applicants shall not be again proposed within one year after their rejection.

SEC. 6. Distinguished non-resident lawyers may be elected honorary members by a vote of the Association, and shall have a voice, but no vote, at meetings of the Association. Provided, that such honorary members be proposed and their names submitted to the committee on membership, and reported only at the next annual meeting.

ARTICLE IV.

OFFICERS.

SECTION 1. The officers of the Association shall be a president, a secretary, a treasurer, and seven trustees; these officers, with the exception of the trustees, shall be elected at the annual meeting of the Association.

SEC. 2. The president of the Association shall be ineligible for re-election to such office, until one year after the expiration of the term for which he was so elected.

SEC. 3. The trustees shall be composed of the president, and secretary of the Association, and five additional members to be appointed by the president, and shall hold office until the next annual meeting of the Association and until their successors are chosen.

ARTICLE V.

ELECTIONS.

SECTION 1. The officers of the Association, with the exception of the trustees, shall be elected at the annual meeting to serve one year and until their successors are chosen. All elections shall be by ballot.

ARTICLE VI.

MEETINGS.

SECTION 1. The annual meeting shall be held at such place as the Association shall determine at the preceding annual meeting, on the last Thursday in July in each year, unless changed by the executive committee. And in default of such selection, or in the event of the time or place fixed by the Association becoming impracticable, the executive committee shall make the selection.

SEC. 2. Adjourned meetings shall be held at such time and place as the Association shall determine.

SEC. 3. Special meetings shall be called by the secretary, when re-

quested in writing by the president, the executive committee, or twenty-five members of the Association. Such requests shall specify the purpose of the meeting. At special meetings, no business shall be transacted except that stated in the call, unless by the consent of four-fifths of the members present and voting.

SEC. 4. At all meetings twenty-five members shall constitute a quorum for the transaction of business.

ARTICLE VII.

COMMITTEES.

SECTION 1. The standing committees shall be: A committee on membership, a committee on grievances, a committee on amendment of the law, a committee on judiciary and judicial administration, a committee on uniform state laws, a committee on legal education and admission to the bar, a committee on federal legislation, a committee on publications, a legislative committee, a committee on obituaries, and a nominating committee.

SEC. 2. A majority of those members of any committee who may be present at any meeting of the Association shall constitute a quorum of such committee for the purpose of such meeting.

SEC. 3. Such other committees may be appointed or elected from time to time as shall be deemed expedient; but except by a vote of the Association, no matters shall be referred to a special committee which is within the province of any of the standing committees.

ARTICLE VIII.

DUES.

SECTION 1. The admission fee shall in all cases be three dollars, to be paid at the time of making the application for admission, which said admission fee shall include all dues for the calendar year.

SEC. 2. The annual dues shall be three dollars a year, payable in advance, except in case of honorary members, who shall pay no admission fee nor dues.

ARTICLE IX.

SUSPENSIONS AND EXPULSIONS.

SECTION 1. Any member may be suspended or expelled for misconduct in his relation to the Association, or in his personal or professional relations, in such manner as may be prescribed by the by-laws; and all interest in the property of the Association held by persons resigning or otherwise ceasing to be members, shall vest in the Association.

SEC. 2. Conviction of any member for crime involving moral turpi-

tude shall at once work a forfeiture of membership in the Association, which forfeiture shall continue until such conviction be set aside or reversed.

SEC. 3. If any member be disbarred or suspended from practice in the Supreme or Superior courts, such disbarment shall work a forfeiture of his membership, until such disbarment be set aside or reversed. Reinstatement to practice shall not reinstate to membership in this Association, unless by a vote of the Association upon recommendation of the committee on membership.

ARTICLE X.

ETHICS.

SECTION 1. The code of ethics adopted by the American Bar Association at Seattle, 1908, shall be the rules of ethics of this Association and all members of this Association shall be deemed to have subscribed thereto and be governed accordingly.

ARTICLE XI.

AMENDMENTS.

SECTION 1. Amendments may be made to this constitution only at an annual meeting, and by a vote of two-thirds of the members present; but no amendment shall be considered (except by unanimous consent of those present) unless a copy of the same shall be sent to the secretary and notice of same given by the secretary in the call for the annual meeting.

BY-LAWS

ARTICLE I.

ORDER OF BUSINESS.

SECTION 1. The order of business at the annual meeting of the Association shall be as follows:

(1) Opening address of the president.
(2) Report of the secretary.
(3) Report of the treasurer.
(4) Report of executive committee.
(5) Report of standing committees:
On Membership.
On Grievances.
On Amendment of the Law.

On Judiciary and Judicial Administration.
On Uniform State Laws.
On Legal Education and Admission to the Bar.
On Federal Legislation.
On Publications.
On Obituaries.
Legislative Committee.
Nominating Committee.

(6) Reports of special committees.
(7) Miscellaneous business.
(8) Election of officers.

This order of business may be changed by a vote of a majority of the members present, or by order of the executive committee.

SEC. 2. The usual parlamentary rules and orders shall govern at all meetings of the Association, except in cases otherwise provided for by the constitution and by-laws.

ARTICLE II.

DUTIES OF OFFICERS.

SECTION 1. The president shall preside at all meetings of the Association, and shall deliver at the annual meeting an appropriate address, with particular reference to any statutory changes of public interest in the state, and any needed changes suggested by judicial decisions during the year.

The president shall, upon his election, appoint all committees, and shall announce them to the secretary, and the secretary shall promptly give notice to the persons appointed.

SEC. 2. The secretary shall keep a record of the proceedings of the Association and all such other matters as may be directed to be placed on the files of the Association; he shall keep an accurate roll of the officers and members, and notify them of their election or appointment on committees; he shall issue notices of all meetings; furnish the treasurer with the names and addresses of persons elected members; conduct the correspondence of the Association; keep its seal; make a report at the annual meeting of his transactions and the condition of the Association during the preceding year; shall collect all moneys due the Association and turn the same over to the treasurer, and shall perform such other duties as may be required of him by the Association, the president, or the executive committee; his books and papers shall at all times be open to the inspection of the executive committee, and he shall receive such compensation as shall be allowed by that committee.

SEC. 3 The treasurer shall keep an accurate roll of the members of the Association; notify members of their election to membership; keep regular and accurate book accounts of, and expend, under the direction of the Association, or the executive committee, all moneys of the Association, and shall exhibit at the annual meeting, and when directed by tne Association or the executive committee, detailed statements of the moneys received and expended, the amount due to and by the Association, and an estimate of the resources and expenditures for the ensuing year; his books and accounts shall at all times be subject to examination and audit by the executive committee, or by any special committee appointed for that purpose; he shall give bond in such sum as shall be required by the executive committee, and shall receive such compensation as that committee shall allow.

SEC. 4. The executive committee shall manage the affairs of the Association, subject to the constitution and by-laws.

All appropriations of the funds of tne Association must be made by the executive committee, unless otherwise ordered by the Association. They shall fill all vancancies in the offices of the Association.

They shall keep a record of their proceedings, and shall make a report thereof at the annual meeting of the Association, and any recommendations which may be deemed necessary for the proper conduct of its affairs.

They shall arrange for the reading of appropriate papers at the annual meeting and for the discussion thereof, and shall have such other powers as may be conferred on them by these by-laws or by a vote of the Association.

ARTICLE III.

COMMITTEES AND THEIR DUTIES.

SECTION 1. The committee on membership shall consist of nine members chosen from different section of the state. All applications for membership or reinstatement to membership shall be referred to this committee. They shall report to the Association the names of such persons as they deem suitable for membership, and shall seek to bring in all the lawyers in the state fitted to become members.

What occurs at the meetings of this committee shall be considered confidential, except such matters as shall be publicly reported to the Association.

Any ten members may appeal in writing to the Association upon the failure or refusal of this committee to report favorably upon any application for membership, or reinstatement to membership.

The committee shall meet at least once in every six months.

SEC. 2. (*a*) The committee on grievances shall consist of five members. They shall hear all complaints against members of the Association, and against members of the bar not members of the Association, and also all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law, and the administration of justice.

(*b*) Whenever any complaint shall be preferred against a member of the Association for misconduct in relation to the Association, or in his personal or professional relations, the person or persons preferring such complaint shall present it, in writing, subscribed by the complaining party, plainly stating the matters complained of, to the committee on grievances. If the committee be of the opinion that the matters therein alleged are of sufficient importance, it shall cause a copy of the complaint, together with a notice of not less than ten days of the time and place when the committee will meet for the consideration thereof, to be served upon the member complained of, in the same manner as a summons in a civil action, and it shall cause a similar notice to be served on the party presenting the complaint. At the time and place appointed, or at such other time as may be named by the committee, the member complained of may file a written answer or defense, and the committee shall proceed to the consideration of the case upon such complaint and answer, or upon the complaint alone, if no answer is interposed.

(*c*) The complainant and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association. The witnesses shall vouch for the truth of the statements on their word of honor. The committee may summon witnesses, and if such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association for its action. The committee shall hear and decide the case thus submitted to it, and shall determine all questions of evidence in accordance with the rules of evidence in civil cases.

(*d*) If the committee find the complaint, or any material part of it, to be true, it shall so report to the executive committee, with its recommendation as to the action to be taken thereon, and may, and, if requested by either party, shall report the evidence taken or any designated part thereof.

(*e*) The executive committee shall thereupon proceed to authorize the committee to conduct the further investigation or the prosecution of the party complained of in the courts, or take such other action on said report as it may see fit, and may recommend to the Association such action as it deems the Association should take in the matter, provided

only, that no member shall be expelled from the Association unless by a vote of two-thirds of the members present and voting.

(*f*) Whenever specific charges shall be preferred in writing against a member of the bar not a member of the Association, for misconduct in his personal or professional relations, or against a person pretending to be an attorney or counsellor at law practicing in the state of Washington, such charges shall be investigated by the committee on grievances; and if in any such case said committee shall report in writing to the executive committee that in its opinion the case is such that requires further investigation or prosecution in the courts, the executive committee may authorize such action and appoint one or more members of the Association to act as prosecutor, whose duty it shall be to conduct the further investigation or the prosecution of such offender, under the instructions and control of the committee on grievances.

(*g*) Whenever any complaint shall be made in writing concerning any other grievance touching the interests of the legal profession, the practice of law, and the administration of justice, the committee on grievances shall make such preliminary investigation into the same as it may deem necessary in order to determine whether it is expedient that any further action shall be taken thereon. And should such further action be, in its opinion, expedient or necessary, the committee shall report in writing to the executive committee of the Association that, in its opinion, the charge or charges are of such a character as to require further investigation or proceedings in court or before any judicial body. Thereupon the executive committee may direct such further investigation or proceedings by the committee on grievances, or otherwise, as they may deem most suitable to the case.

(*h*) The reasonable disbursements of the committee on grievances for the expenditures incurred in any such investigation or prosecution or proceedings, may be paid out of the funds of the Association, under the direction of the executive committee.

(*i*) All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the Association by a two-thirds vote.

(*j*) The executive committee shall, from time to time, appoint a member of the Association to be the attorney of the grievance committee, whose duty it shall be to investigate and prosecute when his attention shall be called thereto by the Association, the executive committee, or the grievance committee, any matters upon which they are by these by-laws authorized to act.

(*k*) When the said attorney shall deem that there is a sufficient

ground therefor, and no complaint nor specific charges in writing shall have been made by any other person, it shall be his duty to act as the complaining party, to formulate and present to the grievance committee a complaint or charge in writing, and to prosecute the same before said committee, by presenting the evidence in support thereof, and to assist the committee in such investigation and prosecution.

(*l*) The said attorney of the grievance committee shall receive no compensation unless the executive committee shall provide differently in each case and thereupon such compensation shall be paid out of the general funds of the Association.

SEC. 3. The committee on amendment of the law shall consist of five members. They shall consider and report to the Association such amendments of the law as they shall deem beneficial, oppose such as they shall deem injurious, and recommend from time to time such action as they shall deem best. Members are invited to send to this committee at any time suggestions of existing defects in the law and of any amendment which they may think advisable.

SEC. 4. The committee on judiciary and judicial administration shall consist of five members. They shall be charged with the duty of observing the practical workings of our judicial system, of entertaining and examining projects for change or reform in the system.

SEC. 5. The committee on uniform state laws shall consist of five members, who shall examine and report annually upon such measures of uniform state legislation as may be recommended by the state board of commissioners for promoting uniformity of legislation in the United States, and such other matters relating thereto as may be referred to them.

SEC. 6. The committee on legal education and admission to the bar shall consist of five members. They shall report from time to time such changes as they shall deem it is expedient to make in the system of legal education and of admission to the practice of law in the state. They shall be further charged with the duty of inquiring into the character and qualifications of all applicants for admission to practice before the Supreme Court of the state. They shall have the power to appear before the Supreme Court and make such report and take such action as they deem necessary in reference to such applications for admission.

SEC. 7. The committee on Federal legislation shall consist of five members, whose duty it shall be to watch all proposed changes in the Federal law, and to propose such changes or such action in reference thereto as in their opinion should be recommended by the Association.

SEC. 8. The committee on publications shall consist of five mem-

bers, whose duty it shall be to prepare and distribute all papers and publications as directed by the Association.

SEC. 9. The legislative committee shall consist of five members, whose duty it shall be to appear before the legislature of the state of Washington and aid in securing the passage of such proposed legislation as may have been approved and recommended by the Association, or deemed wise by the committee, and oppose such proposed legislation as it may deem unwise.

SEC. 10. The nominating committee shall consist of five members. They shall report at the annual meeting a list of names to be voted on for officers of the Association for the ensuing year.

SEC. 11. That the committee on obituaries consist of three members, who shall report to the Association the death of members, and also perform proper duties in regard to eulogies and resolutions upon the memory of our deceased.

SEC. 12. Unless otherwise provided for hereby, or by the Association, all committees and vacancies therein shall be filled by the appointment of the president. Special committees shall serve until they have been discharged by a vote of the Association. Standing committees shall serve until the expiration of the next annual meeting, and the appointment of their successors. All committees may, by a majority vote of the whole committee, substitute some other chairman than the one appointed, may elect such other officers as they deem necessary, make rules for their gavernment, keep minutes of their proceedings, and shall make annual reports in writing to the Association. They may provide that matters requiring attention between meetings may be voted on by letter, and that a failure of any member to attend three successive meetings shall cause his membership in the committee to become vacant. The rules adopted by one standing committee shall govern the succeeding committees until altered thereby.

ARTICLE IV.

MEETINGS.

SECTION 1. At least one month's notice shall be given of the annual meeting, and ten days' notice of adjourned or special meetings, by letter mailed to the last known address of each member.

SEC. 2. No complimentary resolution shall be entertained relative to the reading of any paper by, or to the performance of any act or duty by, any officer or member of the Association.

SEC. 3. A stenographer shall be selected by the executive committee to report the proceedings of each meeting, and those proceedings, together with any paper read at the meeting, shall be printed,

and a copy thereof sent to each member. If desired, twenty printed copies shall be sent to each member reading a paper by request. Copies shall also be sent to every law library in the state, to every other State Bar Association extending a like courtesy to this Association, and to the American Bar Association, and such further distribution as the executive committee may order.

ARTICLE V.

NON-PAYMENT OF DUES.

SECTION 1. When any member becomes more than two years in arrears on his annual dues, the secretary shall notify such member of his delinquency, and if such member shall not pay such arrearage within thirty days after such notice, the treasurer shall report the same to the executive committee, who shall be authorized to strike such member's name from the roll, and such person shall then cease to be a member of the Association.

ARTICLE VI.

AMENDMENTS.

SECTION 1. Amendments may be made to these by-laws only at an annual meeting, and by a vote of two-thirds of the members present; and no amendment shall be considered (except by unanimous consent of those present), unless a copy of the same shall have been sent to the secretary.

ARTICLE VII.

STANDING RULE.

At all meetings and dinners of the Washington State Bar Association, the American flag shall be displayed, and the executive committee shall see that this rule is carried out.

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